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RATIONALE OF COPYRIGHT REGISTRATION

by

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RATIONALE OF COPYRIGHT REGISTRATION

A. Brief History of the Development of the Registration System in the United States.

"The enactment of copyright legislation by Congress under the terms of the Constitution is not based upon any natural right that the author has in his writings, for the Supreme Court has held that such rights as he has are purely statutory rights, but upon the ground that the welfare of the public will be served and progress of science and useful arts will be promoted by securing to authors for limited periods the exclusive rights to their writings...Not primarily for the benefit of the author, but primarily for the benefit of the public, such rights are given. Not that any particular class of citizens, however worthy, may benefit, but because the policy is believed to be for the benefit of the great body of people, in that it will stimulate writing and invention to give some bonus to authors and inventors.

"In enacting a copyright law Congress must consider ...two questions: First, how much will the legislation stimulate the producer and so benefit the public; and second, how much will the monopoly granted be detrimental to the public?

"The granting of such exclusive rights, under the proper terms and conditions, confers a benefit upon the public that outweighs the evils of the temporary monopoly."

[1]

Report of the House Committee on the Copyright Bill of 1909.

Thus, in the United States, the philosophical basis on which the copyright law rests is quite different from that of the countries which declare that the right of an author in his literary or artistic work is a "natural

right" and should therefore be unconditional and subject to a minimum of restrictions. Countries which adopt this latter view have tended in their national laws and international relations to view the author as a person whose rights are paramount to the supposed interests of those who may distribute or use their works. Whereas in the United States, from the earliest laws of the States prior to the Constitution to the present time, there has been an attempt to balance the interests of the entire community in copyright matters.

Three states had already enacted copyright laws when on May 2, 1783, the Continental Congress passed a resolution[2] urging the individual States to enact laws to secure to citizen authors their copyrights for not less than a term of fourteen years, with a renewal term of the same length. The phraseology used seemed to indicate regulation only for the benefit of the author. All the states except Delaware enacted copyright laws between 1783 and 1786. Ten of these states included a preamble or introductory section stating the philosophic basis on which the law was written. It is obvious that the later laws owed much to the earlier ones and the New York law[3] (1786) is substantially the same as the Connecticut law, which was the first one passed. The States which followed

the example of Connecticut placed primary emphasis on the right of the author to be "secured in receiving the profits that may arise from the sale of his works, and such security may encourage men of learning and genius to publish their writings;" [and secondarily on the public interest]: "which may do honor to their country and service to mankind."[4] New Hampshire and Rhode Island followed the lead of Massachusetts in placing first the claim of public interest while at the same time making a strong statement on the natural rights of authors:

> Whereas the improvement of knowledge, the progress of civilization, the public weal of the community, and the advancement of human happiness, greatly depend on the efforts of learned and ingenious persons in the various arts and sciences: As the principal encouragement such persons can have to make great and beneficial exertions of this nature, must exist in the legal security of the fruits of their study and industry to themselves; and as such security is one of the natural rights of all men, there being no property more peculiarly a man's own than that which is produced by the labour of his mind.[5]
>
> Therefore, to encourage learned and ingenious persons to write useful books for the benefit of mankind. ...

Interestingly enough, at that time it was the States which placed primary emphasis on the rights of the author which adopted compulsory registration at a designated pffice. The purpose of the register was first

given in the Maryland Act of April 21, 1783[6] and amplified in the South Carolina Act of March 26, 1784:[7]

> And whereas many persons may, through ignorance, offend against this act, unless some provision be made whereby the property in every such book, as is intended by this act to be secured to the proprietor or proprietors thereof, may be ascertained, as likewise the consent of such proprietor or proprietors for the printing or reprinting of such book or books may from time to time be known; ...[Here follow the provisions for registration][8]

The Maryland and South Carolina laws specified that the register should be open to inspection at all reasonable times.[9]

This concern for a means whereby the public could be notified of the copyright existing in a work was natural because the laws protected only the works of citizens of the United States, and only the citizens of those other States which passed similar laws. Therefore most of the publications in circulation in the States at that time would not be under copyright.[10] In fact, some of the laws pointed out that there was no restriction on the reprinting of any works already published, first published outside the United States, or not otherwise covered by the particular law.[11]

The registration record was made from a declaration which included the name of the author, assignee, or proprietor and the title of the work. Registration was to

take place prior to publication in Maryland, Pennsylvania, South Carolina, and North Carolina. Only North Carolina required the deposit of the work with the declaration, "for the use of the executive of the State." The laws specified the issuance of a certificate (fee prescribed) in Maryland, Pennsylvania,[12] South Carolina, Virginia, and North Carolina.

Of all the States with copyright laws only Massachusetts, New Hampshire, and Rhode Island had no registration system[13] but the Massachusetts law provided[14] that two copies of every work must be presented to "the library of the University of Cambridge, for the use of the said university" for which the librarian was to give a receipt which had to be produced in court prior to recovery of damages for infringement.

Seven of the States heeded the recommendation[15] of the Continental Congress in its Resolution by adopting provisions for the second (or renewal) term. No registration was required to secure the renewal term.

As Dr. Luther Evans points out in Copyright and the Public Interest:[16]

> It is thus apparent that the draftsmen of the copyright clause of the federal Constitution had before them more than one philosophic basis for the exercise of Congressional authority in this field and that the choice made was deliberate. This is not to say that the author's property rights were disregarded; on the contrary the very purpose of [Article 1] Section 8 was to

> confirm and strengthen such property right but not as either a natural right or an end in itself, but as, and only as, the recognition of such right furthered the ultimate purpose of promoting the progress of science and the useful arts.

So, too, it may be expected that the drafters of the first Federal Copyright Law of 1790[17] had some knowledge of the provisions of the different types of copyright laws in the various States. At any rate, the law as enacted developed the registration system more fully than any of the State laws. It provided: that a printed copy of the title of the work should be deposited before publication in the clerk's office of the district court where the author or proprietor resided; that the clerk should enter the work in a prescribed form in a record book kept for the purpose; that the certificate issued under the seal of the court, if the author required one, should be a copy of the record; that a fee should be charged for the act of recording and for each certificate issued; that the author or proprietor should publish, within two months, a copy of the said record in one or more of the newspapers published in the United States for the space of four weeks; and that within six months of publication a copy of the work should be deposited with the secretary of state for each State for preservation in his office. Moreover, the duration of

the copyright was to run from the date of registration of the title instead of from the date of publication or first printing as had been stipulated in the laws of the various States.

Here was introduced also for the first time the requirement that renewals must be registered to gain the benefit of the extended term.

In the supplementary Act of 1802[18] it was further required that the copyright owner should insert the copy of the record as a notice on the title-page or page immediately following in every book, or on the face of any map or chart. The securing of copyright, however, was contingent on registration until 1909.

The beginning of a Federal central record bureau came about under the general revision Act of 1831 when it was provided that the clerk of each district court at least once each year should transmit a certified list of all records of copyright and the copies of the works deposited to the U. S. Secretary of State for preservation. The duty of keeping the records was entrusted to the Department of the Interior by the Act of 1859; transferred to the Librarian of Congress in the general revision Act of 1870, and the Copyright Office was established with a Register of Copyrights under the

direction of the Librarian of Congress by the Act of Feb, 19, 1897.

Although the deposit of copies was always required, and a central depository designated since 1831, deposit for the enrichment of libraries did not begin until 1846 when the law was amended to provide for the deposit of one copy of each copyrighted work in the Smithsonian Institution and in the "Congress Library." The Act of March 3, 1865 made the Library of Congress the only depository. Also this Act made it the "duty" of the Librarian to make a written demand for any copyright article not deposited. This was the beginning of the "compliance" feature of the law which has undoubtedly helped to keep the registration system reasonably complete from 1909 on, especially after the decision in the Washingtonian Case in 1938.[19]

Recordation of assignments dates from 1834. "All deeds and instruments in writing for the transfer or assignments of copyrights, being proved and acknowledged in such manner as deeds for the conveyance of land are required by law to be proved or acknowledged in the same State or district, shall and may be recorded in the office where the original copyright is deposited and recorded..."

The printed catalog of copyright deposits and registrations, the Catalog of Copyright Entries, dates from 1891.[20]

During the period from 1790 to 1909, therefore, the registration system was the backbone of the copyright law, on which the privilege rested. If a work was not registered, it was not under copyright. (During most of this period registration, either compulsory or voluntary, was in effect in most of those countries of the world which had a copyright law.) Under this system the public and the marketers were afforded a record of all copyrights. Authors were less happy because failure to fulfill all the technicalities of the system sometimes caused them to lose their copyrights.

During this period economically and culturally the United States emerged from the status of a small country, developing an economic and cultural sufficiency with less and less dependence on imports.

At the same time, as its wealth grew, it became a more valuable market for the works of British and Continental authors who were afforded no copyright protection (until 1891 for works in a foreign language, and 1904 for works in the English language) and whose works were widely pirated in cheap editions, thus in practice damaging the market for American authors, since British and European authors were held in high prestige in the United States. Reciprocally, the works of American authors

began to receive more attention in Europe. In Europe the impetus for an international copyright convention to facilitate the enforcement of authors' rights in foreign countries was supplied by the authors themselves, especially through the International Literary and Artistic Association (founded in 1878)[21] which was instrumental in calling the first Berne Conference of 1883, and the ideas on which that Convention was based were reflected in the national laws of the adhering countries, from 1886 on. In the development of the American Copyright Law many important interests connected with the creation and marketing of copyrights have been concerned and have had substantial effect on the provisions of the law; for example, the printers succeeded having the manufacturing clause included in 1891 to protect their interests.

During the Conference on Copyright, 1905-1906, the question of registration was discussed at each of the three sessions held. It was agreed at the beginning of the Conference that it would be desirable to remove technicalities which might cause an unwary author to lose his copyright in connection with formalities and to reduce formalities as much as possible.[22] It was agreed that the notice rather than the registration entry was the effective means of informing the public of the existence

of the copyright monopoly and copyright should therefore depend on publication with notice rather than on registration. Mr. Solberg, Register of Copyrights, said deposit of the title prior to publication seemed only a complication and embarrassment.[23] Surprisingly, some reluctance on the part of dramatists, music and artists' groups to give this up (although they felt compliance had been difficult) developed because these groups had apparently been using the deposit of titles to protect unpublished works,[24] which were protected only under common law prior to 1909. It was not proposed to do away with the registration system entirely, on the contrary the majority felt that there was a decided advantage to registration (1) for the protection of unpublished works, further secured by deposit of the work itself;[25] (2) as a means of determining the date of publication;[26] and the (3) duration of the copyright term;[27] (4) as protection against innocent infringement;[28] (5) as a means of tracing title;[29] (6) as a means of proof in cases of litigation by making the registration certificate prima facie evidence of ownership, date of publication, etc.;[30] (7) as making the Copyright Office a place of record to which the public could refer for information.[31] There was also evidence given of the use of the deposit copy in litigation,[32] and as identification of the work under

copyright.[33] The printed record of the entries registered, The Catalog of Copyright Entries was accepted without much discussion, as a means of security for the original files, and as a means of prima facie proof. Mr. Solberg summed up the matter in these words:[34]

> "Every endeavor has been made in this bill to provide for the removal of formalities. On the other hand there seems to be a desire for such formalities as shall eliminate cost in the way of evidence later on..."

It was also proposed that a definite time limit be set (various periods were proposed but all were short) within which registration should be accomplished and such a limit was included in the first bill submitted,[35] but this restriction was subsequently removed and the word "promptly" substituted for a definite limit.[36]

The essential purpose of the registration system connected with the Copyright Law of 1909 was thus to be a protection to the creator and to the users of literary properties. It was not a statutory requirement for the creation of copyright except in regard to the renewal term (which in itself was thought to be insurance for the "unknown" or inexperienced author who might have unwisely signed away his rights during the first term) and it was a condition precedent for bringing legal action.[37] Failure to deposit copies of a work published with notice,

after written demand by the Register of Copyrights, would result in a fine and the voiding of the copyright.

During the period from 1922-1940 there was a series of bills introduced into Congress aimed primarily at amending or revising the existing law to eliminate compulsory formalities in order to permit the United States to adhere to the International Copyright Convention. There had been growing sentiment for adherence especially in authors' interests ever since the formation of the Berne Union, but since protection could be gained in Union countries by "simultaneous" publication in Canada or Great Britain, the impetus was not great enough to secure the necessary support for enabling legislation until American motion pictures and music became so popular in Europe that the industries concerned began to push the matter.[38]

All of the bills[39] included provision for registration of works and recordation of assignments and licenses. None of the bills made registration a compulsory act for acquiring the original copyright, but all provided some incentive to register and record either by granting privileges to works registered or recorded or by denying the right to sue unless registration or recordation (whichever was specified) was effected. In arguing the point

that copyright should exist on creation without formalities, (a necessary condition to be granted to foreign authors, at least, to gain admittance to the Berne Union) the proponents of the bills argued that an author has a natural right in his work which should not be lost through failure to comply with technicalities in regard to required formalities, which, under the 1909 Law, in regard to registration affected renewals only. They also argued an author should not have to prove title to personal property. There was little opposition to a system of <u>voluntary</u> registration on the part of author interests although doubt was expressed as to the effectiveness of the register. Mr. Osborne, counsel for the Dramatists' Guild of America, said in the Hearings on the Duffy and Daly Bills:[40]

> We have never quarreled, except in the bills which we supported [Sic. Obviously intended: which we did not support] with the idea that there should be registration. It does not mean that we like registration; it does not mean that we want it; it does not mean that there should be discrimination, but if you are going to have registration, then nobody can be innocent. There can be no innocent infringement.

On the other hand the interests which marketed copyrights had built up a reliance on the registry system for proof of ownership and convenience in the sale and transfer of rights.[41] Some of these interests in some instances felt that a system of voluntary registration

R. Ould, a patent attorney, made a statement on the use of deposit to maintain suit, in the 1936 General Revision Hearings (supra, note 40, at 1386):

> The deposits are important not only to maintain the collections of the Library of Congress complete, but also as a matter of legal record to define the copyright property which the author claims the right to exclude the public from. In copyright infringement suits, from time to time it becomes necessary to prove under established rules of evidence, the exact contents of the work which was entered and deposited in the Copyright Office. If such work is in the collections of the Library of Congress, with the stamp of the Copyright Office thereon, such proof is simple. If such work is one of the 60,575 works returned to the claimant during the fiscal year 1935 under section 60 of the 1909 act, the proof may be much more difficult, but if the claimant has retained the officially stamped deposited copies which were returned to him, he at least can produce them for evidence. But if no copies were ever received and stamped by the Copyright Office, any litigant is faced with a very difficult task in proving just what was the contents of a work which was the subject of copyright on a given date.

66. Louis Caldwell, presenting the position of the National Association of Broadcasters, listed (1936 Hearings, Id., p. 469) as the first of the important points to be provided for in any copyright legislation "a trustworthy and practical means by which copyrighted works can be distinguished from works in the public domain, and by which the ownership of performing rights in copyrighted works can be ascertained."

67. According to the Rogers' study (supra, note 61) the primary use of copyright records is economic. Dr. McClure, of the State Department, said (supra, note 40, at 1057):

> The public and the user of copyrighted works are deserving of consideration. From their point of view registration is desirable. Copyright is a monopoly.

on the part of the motion-picture producers; first, as to how to secure an accurate search so that they will know where they are purchasing motion-picture rights to a published work that the person who is selling to them actually owns those rights, and, second, after so purchasing the rights, to place their assignments, so-called, on record so as to secure protection against the whole world. The courts, I believe, have held or have intimated that a mere grant of motion-picture rights is not a copyright assignment but a license and is not a recordable instrument under the law. There is, of course, no sound reason for any such distinction as the law has been interpreted. Of course, at the time the law was passed, the motion-picture industry was in its infancy.

This is a very genuine difficulty, as will be pointed out by the motion-picture producers-a genuine difficulty in securing a clear title, and these provisions of the law have been designed to make the recording of an assignment, a license under the copyright, and place them on the same basis as the recording acts place conveyances to real estate so that when some one acquires from the copyright proprietor any right included in the copyright, he must, in orderto protect himself against innocent infringers, place that assignment on record and that puts subsequent purchasers in a condition where tney can go to the record of the copyrights and rely on those records as constituting a statement of the record at the time they purchase, and that will make for certainty in purchases.

Mr. Solberg, Register of Copyrights, made
41b
these comments:

In the arguments heard by your committee urging the need for compulsory registration, it seems clear that the persons making them have lacked the courage to recognize and face the situation that will exist when the United States enters the Copyright Union(as it eventually must). Then all foreign authors will be released from the obligation either to register or to insert any notice of copyright. Such notice could only be required in the case of American works.

> The entire mass, therefore, of foreign works in which copyright is subsisting would be without such notice. This omission, however, would be offset by the obvious presumption of copyright in every work of a foreign author. In place of the present search to determine that in the case of any particular work copyright does not subsist the search would be directed to ascertaining the name and address of the owner of the copyright. Other requirements - other methods. Foreign publishers have had to adjust themselves. As no index of copyright registrations was available for search, they hadvehad to organize some central bureau or office of information. The matter is not particularly difficult. Authors and copyright owners do not have the habit of hiding themselves away - quite the contrary; and agencies exist which could be utilized for reaching the person entitled to negotiate for the use of the copyright work.

The Minutes of the Shotwell Committee show that there was a great deal of discussion about the question of formalities. In regard to registration (Minutes of Nov. 4, 1938, p. 22-44) the authors' representatives argued that they considered any formality a trap by which copyrights could be lost, that the registration system was unreliable[42] because it was no defense against plagiarism, and there was no investigation of the legitimacy of claims to proprietorship, and in toto the system was useless, However, they expressed willingness to continue the deposit of copies for the benefit of the Library of Congress, provided failure to do so was made subject to a fine rather than a voiding of the copyright (p. 23). The users of copyright materials on the other hand expressed the view

that the registration record was reliable 95 out of a 100 times (p. 27), that they used the record satisfactorily, and they saw no other way to get a record of ownership. Particularly they were interested in the recording of assignments and licenses. Since it developed that no one really knew how copyright business was transacted in the countries without a registration system, it was agreed to write abroad to find out. The replies[43] received did not provide the information sought on the methods used in lieu of a registration system, but did indicate that a system of records, particularly of transfers of ownership, would be very useful, provided the registration system would not be the means of invalidating copyrights. One of the chief objections raised by the European experts was the question of cost - they felt such a system would be impossibly expensive.

Meanwhile the Supreme Court had handed down the decision in the Washingtonian Case which the committee members agreed put a new look on the importance of registration. In the Minutes of March 2, 1939 (p. 17-18) the following comments on the Washingtonian Case and the reports from the experts abroad were recorded.

> Mr. Kaye: ... They, then, the publishers of The Washingtonian, although it was fourteen months later, registered and deposited and then commenced suit. Defense was raised that fourteen months was not prompt and that, therefore, there was no copyright inherent in the work, and the case went to the Supreme Court. Mr. McReynolds, writing the opinion of the Court, made the rather

surprising conclusion for most of us that there was no necessity for deposit and registration, except before suit. We had thought that the purpose of deposit and registration was so that we could look in the records and say, "Why, shucks, this is the work and we are not close to it, so why need we be afraid?" But apparently that is not the case, apparently the publisher of a book may merely affix the notice and then wait until he sees an infringer come along, and after the infringement has been committed he may comply with the balance of the requirements of the copyright act and his suit will lie. Well, that reduces the importance of the formalities greatly, because that is the law of the land. Many of the arguments we have made for the necessity of these formalities become rather empty, and I think that the work of the Formalities Committee will be rather expedited by that decision.

Miss Sillcox: I agree with Mr. Kaye. The whole situation, a lot of the arguments we were having on this question, has been wiped out and we have got to do some new thinking on it. I do think [sic] the thinking is going to be easy but I do think we have to approach it.

Dr. Ware: There were indications in the memoranda sent by Mr. Kilroe that Europeans who have copyright without formality are very much interested in having some kind of a record, a record of transfer which is one of the things we were working on there. It seemed almost equally important that that phase of the matter, the registering of licenses should come in. Mr. Kaye, do you think that that would also virtually be eliminated by this decision?

Mr. Kaye: No. The discussions we had before this decision came down were predicated on our desire not to have formalities as a prerequisite to copyright, but nevertheless to have such records of the date of publication of the work, the proprietor of the work, the transfer of the copyright, as would enable people to deal in the work without overwhelming risk. I think that those considerations remained effective and in our further thinking we will try to give that protection to users without making it necessary for the purposes of the authors obtaining copyright.

The Shotwell Bill as finally presented to Congress[44] required deposit of copies at the Library of Congress by the publisher, provided for voluntary registration, encouraged by issuance of a certificate as *prima facie* evidence, encouraged recordation of assignments by providing that a grantee who recorded in good faith and without notice of a prior conflicting grant, should prevail over any prior grantee who had not registered, and provided that the certificate of recordation should be admitted in court as *prima facie* evidence. The letter transmitting the bill to Senator Thomas[45] said, in part:

> In the application of such theory to practice the Copyright Office would be able to record facts concerning copyrighted works useful to users of such works without the possibility of penalizing the author or endangering authors' rights...
>
> ...since the author is the first owner of his works, it is provided that he may grant the right or rights to use such works, in whole or in part and for any specified time or place. Owners other than authors may do likewise. But all such grants of a right or rights to use must be in writing. The grantee may record the same in the Copyright Office. This arrangement, patterned after the registering of deeds to real property, protects users and authors alike. The user may go to the Copyright Office for information about the ownership of literary and artistic works he may wish to buy. If he buys a right to use a work that has not been recorded, and if he records his grant, his right is to prevail over a prior unrecorded grant of the same right.

Since the drafting of the Shotwell Bill many changes have taken place in world affairs which directly affect copyright. The United States has become the leading world power, and as such, it has developed a positive program to aid underdeveloped nations to adjust to the twentieth century concepts of industrial, economic, and social development. This program is implemented by the use of cultural materials in mass communication on a tremendously enlarged scale. The very fact that the United States has such a leading position in the world has created interest in and a demand for its cultural products. At the same time, the introduction of new means of mass communication, such as television, tape recordings, etc., and increased leisure in which to enjoy cultural activities has created larger markets in this country. On the international scene UNESCO is engaged in a far-flung program to disseminate knowledge.

As a result of all these factors the number of works created and marketed throughout the world has vastly increased. So, therefore, has the problem of keeping records of them.

The major achievement in copyright legislation in this country in this period was the amending of the Copyright Law of 1909 to allow the adherence of the

United States to the Universal Copyright Convention, in 1955.

In approaching the problem of the registration system in the current copyright revision movement, then, it will be possible to view the question strictly on its merits, as a domestic issue, without reference to foreign works, for which registration is no longer required for copyright protection in the United States under the U.C.C. With this view in mind, the purposes of a registration system and the services it may be made to render are examined in the next section of this paper.

B. Purposes Served by a Registration System Connected with the Copyright Law.

I. In general:

1. A system of registration implies a central office where all objects subject to its jurisdiction are recorded. A registration system set up by a federal statute therefore implies a national office which should assure to everyone in the United States an impartial administration of the recordation system and an opportunity to everyone who wishes to do so to consult the records concerned, in one place.[46]

2. In connection with copyright, a registration system is the means of providing authors and their successors with record evidence of the facts needed to protect their works against unauthorized use, and the means of enabling users of literary and artistic works to obtain information needed to determine whether particular works are availabe for their use, and from whom authorization

to use should be obtained. A central copyright registration system, therefore, should provide reliable information about:

a. The identity of any work registered,[47] that is, its character, title, author, and any other descriptive data necessary to distinguish it.

b. The ownership of rights in any literary or artistic property registered, at any time. This should include not only the original copyright claim but also subsequent transfers of ownership.[48]

c. The extent of the claim in any work registered;[49] that is, whether the claim covers the whole work, or is limited to a part of it, such as the illustrations in a book, the piano arrangement of a musical work previously copyrighted or in the public domain, etc. It may be of great importance to know the extent of the new matter in successive editions or versions of the same work.

d. The date from which the term of copyright is computed (under the present law, the date of publication or the date of registration), as an indication of the status of copyright (i.e., whether a work is still under protection or in the public domain).[50] The establishment of this date is often of great importance, also, to authors as evidence of prior authorship.

3. If the document presenting the facts for registration is accompanied by the deposit of a copy of the work (as required under the present law) the reliability of the registration records and the administration of the copyright law are strengthened thereby:

a. Perfecting of the registration record and removal of technical faults in the claim. An examination of the document (application) together with the work itself often reveals clerical errors

or discrepancies between the facts stated on the document and the facts presented on the work, as to the identification of the work, the ownership of the work, the extent of the claim, the date of publication, or other pertinent facts, which through correspondence, may be corrected, so that the record is perfected and technical shadows on the claim, which might prove serious in a legal action, are removed.[51]

b. Elimination of unfounded claims, thus protecting the public against abuse of copyright monopoly.[52] Examination of the work itself sometimes reveals that:

(1) The work has been published without notice; thus, the work is in the public domain. Works are sometimes published with a notice which is not placed correctly on the copy or lacks some requisite element which may invalidate the copyright. The Office constantly seeks to educate the public as to the proper form and place of notice, thus trying to prevent future mistakes of this kind.[53]

(2) The work contains no copyrightable matter. These works may be reprints, without new matter, of works already registered, or in the public domain; or mere ideas, synopses, or outlines only, not developed into a literary or artistic work; or slogans, titles, trade-names or trade-marks only; blank forms, etc., or almost any object imaginable.[54]

(3) The works are not entitled to protection because the author is a non-resident alien who is a citizen of a country with which the United States does not have copyright relations, or the applicant has not complied with the manufacturing and ad interim provisions of the law.

4. The deposit of works gives reasonable assurance that one library in the country, the Library of Congress, will have the means of acquiring for preservation in its collections the cultural heritage of the American people.[55]

II. Protection Offered by a Registration System to the Copyright Owner (Creator or His Heirs, Assignees or Proprietors)

1. The certificate of registration offers prima facie proof for use in litigation of the facts contained therein. The facts included in the certificate now issued are: the class of the work, the name(s) of the author(s); the citizenship of the author (and if an alien domiciled in the U. S., his address); the date and place of publication (or the date of registration in the case of an unpublished work); the new matter, where the work is a new version of an earlier work; the date of deposit of copies; and the registration number assigned in the Copyright Office. In the case of a book, the certificate

states the receipt of the affidavit showing compliance with the manufacturing clause.

The value of having such evidence, which a U.S. author obtains by the act of registration, is perhaps more forcefully shown by the fact that countries not having a registration system find it advisable to have some documentary proof (of some at least of the facts enumerated above), which apparently facilitates the course of litigation.[56]

2. Registration of unpublished works provides the author with a means of identification of the work and of proof that his work was created prior to the date of registration, and thereby reinforces his rights while the work is being marketed. Mr. Howard, of the American Dramatists Club, in the Conference on Copyright, May 30 - June 2, 1905 (v. 1, p. 363-4) said dramatists would like to be able to file the unpublished manuscript for identification. He pointed out that dramas are often radically changed in the course of rehearsal so that it is not feasible to publish a drama until it has been produced. He also states that it may be years before it is produced.

It would seem that authors recognize the value of registration because in most of the classes where

registration of unpublished works is now allowed[57] the registration of unpublished works either exceeds numerically the registration of published works[58] or constitutes a high percentage of the total registration in the class. As is pointed out in the 1957 Report of Committee 15 of the American Bar Association Section of Patent, Trademark and Copyright Law (p.64) many commercial transactions take place while the work is still in the unpublished stage.

Registration of manuscripts of non-dramatic literary works is not provided for in the law of 1909 but the records of the Office indicate that each year many applications for registration of unpublished manuscripts and poems are received.[59] M. Salzman in his book Plagiarism,[60] urges every author to register his work and, if he cannot register his unpublished manuscript with the Copyright Office, to register it with an author's society or the Secretary of State of California.

3. Registration provides a record of the literary property of an author which facilitates the sale or management of his property.[61] The registration record is utilized by an author selling a property as proof to the buyer of his ownership. If the author is selling all of his literary properties as a package he will have a certified record of his ownership to his complete holdings (if he has registered his works faithfully.)

It is oftentimes the heirs, or executor, or trustee of the author's estate who make use of the registration records to ascertain all the copyright properties of the author.

The fact that there is a public record of the author's works may be said to be a protection and an advantage to him in that anyone seeking to use his work has a means of ascertaining his ownership of it and will be enabled thereby to locate him to secure the authorization to use his work.[62] The fact that a work has been registered makes it more difficult to sustain a defense of "innocent infringement," in litigation.

4. Registration establishes the basis for renewal term.

Under the present copyright law the provision for a renewal term was continued from the old laws to insure that an author, if he had been forced by circumstances to make an unsatisfactory assignment of his rights in the first term, would have an opportunity to retrieve his property and make a new contract for its use. In order to avail himself of this privilege he must register his claim to the renewal right. The original claim must have been registered in the first twenty-eight year period, however, to establish the basis for the renewal claim. The records of the Office are constantly consulted by interested parties to determine the period within which the renewal claim must be made.[63]

5. The unpublished works deposited with the

application for registration are retained in the files of the Copyright Office for the duration of the copyright term - if transferred to the collections of the Library of Congress they are kept permanently.[64] Since the number of copies of an unpublished work is usually small, the preservation of the unpublished work in an archive affords a measure of protection to the author in the case of loss of the other copies.[65] Frequent requests for photostatic copies of an unpublished work are received by the Office from the author, either as proof that the work he is selling, or has in litigation, is the one that has been registered, or to replace a missing copy. Less frequently, the author also has occasion to request from the Office a copy of a published work for the same reasons.

III. Protection Offered by a Registration System to a User of Copyrighted Works.

The person who wishes to market a literary or artistic work, an author who is going to adapt an already existing work into another form, a translator, a compiler of anthologies, encyclopedic works, etc., a scholar who needs to make extensive use of the work of others, anyone who wants to perform a dramatic or musical work, -- in short anyone at all who makes use of works which are subject to the protection of the copyright law must for his own protection assure himself (1) of the status of

the copyright claim in the work, that is, whether it is in the public domain or under copyright protection, and, (2) if the latter, that the person from whom he buys rights, licenses, or receives permission to use is the actual owner of the property at the time.[66] To the user, therefore, a means by which he can discover these facts in regard to all classes of copyrightable materials in which he may be interested, and by which he can be assured that the information he receives is reliable, is of the utmost importance. It is also of some importance to him to be able to ascertain the facts expeditiously, which means that it is to his interest to be able to find all the facts in one place. A registration system should be reasonably responsive to all these needs, and users of copyright materials in the United States have been in the past the strongest supporters of a registration system for this reason.

In the last century the author of a book usually sold his rights to his publisher. There might possibly have been a chance to receive payment also for publication in a periodical or newspaper.[68] In 1909, the motion picture industry was so small that it seemed to most people that films were adequately protected as "photographs." Today, the amount that an author receives from the original publication of almost any copyrightable work may be very small in comparison to the amount he will receive from

use of the material in another medium, or in performance. Therefore, the number of persons interested in tracing new or older properties has increased accordingly.[69] The large amounts of money involved in these transactions make it even more important to the user that he be sure of the legality of the claim on which he is relying.

C. Registration as a System of Record Keeping.

Register. A book containing a record of facts as they occur, kept by public authority.

Record. A written memorial made by a public officer authorized by law to perform that function, and intended to serve as evidence of something written, said, or done.

Records may be either of legislative or judicial acts. Memorials of other acts are sometimes made by statutory provisions.

The fact of an instrument affecting property being recorded according to law is held to operate as a constructive notice to all subsequent purchasers of any estate, legal or equitable, in the same property.

But all conveyances and deeds which may be de facto recorded are not to be considered as giving notice: in order to have this effect, the instruments must be such as are authorized to be recorded, and the registry must have been made in compliance with the law, otherwise the registry is to be treated as a mere nullify,[70] and it will not affect a subsequent purchaser or incumbrancer unless he has actual notice...[citations] but where a statute makes it discretionary to record an instrument, the effect of recording is in no wise lessened, but is deemed a constructive notice the same as if the recording had been required...

-- Bouvier's Law Dictionary, 3d rev., 1914.

Mr. Ould, in his statement at the 1936 Hearings speaking of the desirability of registration accompanied by deposit, said:

> Testimony in the present hearings before this committee has pointed out the essentially different nature of the problem of searching out copyright works, and preventing copyright infringement, as it exists in the United States, and in European countries. Most European countries are relatively small in area and are compact, and publications and acts of infringements do not cover any such area as is the case in the United States. And in most European countries, a very effective remedy against a copyright infringer is available by boycott by cartels and syndicates, in a way which would be a violation of the antitrust laws if employed in the United States. For this reason, litigants in many European courts are not faced with the problem of proving just what was the subject matter on a certain date of a work on which copyright is claimed, whereas litigants in the United States must face this problem. It should also be emphasized that the traditions of the legal system of the United States have been to require as accurate definition as possible of property rights, particularly those taken from the public, and that the legal systems of many European countries in which automatic copyright obtains, are essentially different.

He mentioned also the legal deposit system but doubted if such deposits could be required by law in the United States except as an incident to the perfection of copyright. "It appears that any requirement for deposit in the United States, outside copyright, would be taking private property for public purposes without compensation."

Berne Union writers on copyright have expressed such repugnance to registration and deposit as a formality in connection with copyright that it is easy to overlook the fact there are in Berne Union countries various record and deposit systems.[72] In fact, for the properties for which there is the most frequent use - those involving performing rights - collection societies composed of authors and publishers have been established and the record and deposit system by which the works are controlled are an almost exact counterpart of the U.S. registration system. Registration with these societies is, moreover, for all practical purposes compulsory (although status of copyright is not affected, of course) in many countries, at least, since the societies collect all the fees for performances, and proceeds which are not disbursed to members become part of the society's pension fund.[73] Since the benefits received are obvious, there does not seem to be much opposition to the system. For properties in regard to which use is less frequent and immediate, but copies of which are required to be deposited under the system of legal deposit, the records of that system may be used for copyright purposes for proving dates of publication, etc., but these records, of course, show no transfers of rights. There seems to be an increasing trend, however, toward organizing collection societies for these materials also.

For materials not recorded by these two systems negotiations are carried on through the publishers' own records. But there are not, in Berne countries without a voluntary registration system, public records covering all classes of materials and answering so many of the essential purposes of a registration system.

A system of registration in connection with any subject, whether it be a registration of property - such as deeds, copyrights, or securities; a registration of an act - such as births, deaths or marriages, -- or other types of register, is a method of keeping a reliable record of facts for which a future need is expected. It is a tool, not an end in itself, and its existence is justified by the extent of its usefulness. Americans who are used to the legal and economic conveniences of a central public registration system may well question if the Berne Union countries are not sacrificing protection and convenience to a shadow rather than substance.[74]

FOOTNOTES

1. U.S. 60th Cong., 2d Sess., H.R. Rept. No. 2222 (1909).

2. Citations of laws in this section are from U.S. Copyright Office, Copyright Laws of the United States of America 1783-1956 (1956). Resolution, p. 1.

3. Id. at 19.

4. Id. at 1.

5. Id. at 4.

6. Id. at 5-6.

7. Id. at 11.

8. Id. at 12, line 34.

9. Id. at 6, line 19; at 15, line 6.

10. The number of works registered or published with notice is still a small part of all the potentially copyrightable material published in the U. S. The Copyright Office has found no really satisfactory way to ascertain what percentage of all works published currently is under copyright. From checking bibliographies, it is apparent that the important trade materials in books, music, dramas, maps, theatrical motion pictures, and periodicals are registered. On the other hand, there is a vastly greater amount of potentially copyrightable material in other categories that is published without notice and not registered, for example: newspapers, state publications, publications of societies, reports of corporations and trade organizations, promotional literature, advertisements, labels, etc. With respect to the great bulk of the latter material, it is probably true that the authors and distributors have no interest in securing copyright.

11. [illegible]

12. [illegible] of the title page, supra, note 2 at 11, line 18.

13. The law did not cover anonymous works however, "...all books...having the name or names of the author or authors thereof printed and published with the same, shall be the sole property of the said author or authors...their heirs and assigns..." Mass. Law of March 17, 1783. Id. at 4, 8-9.

14. Id. at 4.

15. These States were: Connecticut, Maryland, New Jersey, Pennsylvania, South Carolina, Georgia and New York.

16. Evans, Copyright and the Public Interest, 10 (R.R. Bowker Memorial Lectures, 1949).

17. Supra note 2, at 22.

18. Id. at 24.

19. 306 U.S. 30. 190.

20. Act of March 3, 1891, supra note 2, at 49-54. Actually there were several attempts to publish such a catalog previously.

American Museum, V. 1, pt. 1 (1822-1823) included a list of all books deposited at the Dept. of State through April 1823 prepared by a commercial publisher. A petition to Congress to appropriate funds for a similar publication in 1834 was turned down. (Johnson, History of the Library, V. 1, p. 372,) Charles Jewett, Librarian of the Smithsonian Institution, was quite convinced of the utility of a catalog based on copyright deposits and actually published such a catalog as an appendix to the Annual Report of the Smithsonian Institution in 1851, the entries covering the period from Aug. 10, 1846 to Dec. 31, 1850.

21. Ladas, International Protection of Literary and Artistic Property 71-75 (1938).

22. Conference on Copyright, May 30-June 2, 1905, p. 332 ff., 362.

23. Id. at 345, 368.

24. Id. 344, 357, 363-364, 395. Mr. Appleton for the book publishers felt this was unnecessary.

25. Id.

26. Id. at 373.

27. Id.

28. Id. at 350.

29. 2 Conf. on Copyr., Nov. 1-4, 1905, pp. 198-200.

30. Id. at 217; 3 Conf. on Copyr., March 13-16, 1906, pp. 70-78.

31. 2 Conf. on Copyr., at 200-201, 205, 209.

32. 3 Conf. on Copyr., at 97

33. Id. at 168.

34. Id. at 76.

35. 59th Cong. 1st Sess., S. 6330, §11.

36. The Supreme Court in the Washingtonian Case (306 U.S. 30) ruled that registration made subsequent to an infringement does not impair the right to bring suit. The decision pointed out that "promptly" is nowhere defined in the law. As a matter of fact, a sample survey of deposits in 1956 revealed that the vast majority of works are deposited with reasonable promptness within the first six months of publication. Cf. U.S. Copyright Office: Time Interval between Deposit and Publication Dates, all classes. [chart] April, 1957. See Appendix.

37. 17 U.S.C. §14.

38. De Wolf, Copyright Revision (194?) p. 9-26 reviews briefly the origins of all the bills, interests involved pro and con, including the political factors in Congress which contributed to the fate of the bills. There were in many of the bills other provisions of the law which were revised such as: divisibility of rights, abolition of compulsory license, increased scope of protection and length of term, etc.

39. For a concise statement of the provisions in the various bills à propos the registration system see Berger, Summary of Proposed Legislation in Regard to Registration of Claims to Copyright, 1924-1940 (1956).

40. U.S. 74th Cong., 2d Sess. Hearings before the Committee on Patents, 537 (1936). The authors opposed these bills which exempted Berne Union authors from formalities, but required American authors to give a copyright notice and continued the registration provisions of 1909. At this time the authors were not so much in favor of joining the Berne Union because of the international situation. In the earlier hearings on the Perkins Bill (U.S. 68th Cong., 2d Session, H.R. 11258, 508 (1925)) Mr. Osborne attacked the registry system as not revealing the true facts of ownership because no examination of the claim to registration is made and registration may be made in the name of a person who is not the copyright owner and the buyer consequently is misled. He says (p. 509) about the prior Dallinger Bill which was not fully supported by authors but which had more liberal registration provisions than the Perkins Bill that authors "felt that a bill propounded by a private interest must be propounded for the benefit of that interest." It would seem, therefore, that the authors' position on registration was quite likely to be influenced by other factors in regard to a particular bill. Miss Sillcox, Secretary of the Authors' League, in her testimony on the Duffy and Daly Bill Hearings (p. 541), expressed the view also that the registration system was not workable because it was impossible to trace changes in the titles of different versions of the same work and in the Conference Minutes on the Shotwell Bill Nov. 4, 1938 (V. 1 p.154) she made the statement again but Mr. Kilroe representing the motion picture interests said he felt the record would be correct 95 out of a 100 times, and that he traced all entries under an author if the particular title known was not there, Actually the Copyright Office does record changes in titles at the present time, if the copyright owner requests it. See Circular No. 19A attached as supplement.

...

41. Berger, supra, note 39, at p.5, 14, 29, 32. But Arthur Weil, Counsel for the Motion Picture Producers and Distributors of America in the Hearings on the Vestal Bill (infra, note 41a, p.248) said: "That is the present situation with reference to registration. On the other hand, registered copies of all works require notice of copyright, and you at least, if some other work came before you and there was some question as to whether you were infringing or not, you would at least have the opportunity to have the limited protection

afforded you by search of the copyright office to see if a work had been registered, and also you had the opportunity of seeing if a copy was available and you had notice of copyright. Now all that is to go into the discard. You can not throw settled habits of thought into the discard, and our people have been accustomed to being given some opportunity to see whether works are copyrighted in fact or whether or not they are apparently available to the public. If you go into the Berne convention - and we are in favor of going into the Berne convention - you can not, in our opinion, prescribe the placing of notices of copyright on works nor registrations as a condition of the securing of copyright, because under the scheme of the Berne convention copyright is automatic on creation; but you can, in a measure, under proper machinery, safeguard the public to some extent in their settled habits of thought until they become accustomed to the effects of this transition. For that reason the avenue of approach seemed to be along the line of so-called "innocent infringement" clauses; that is to say, clauses of that character, if properly drawn, seem calculated to cause any prudent individual to register his work or to place notice of copyright on it, or to do both, because innocent infringement clauses provide that they do not apply. That is, the defense of the innocent infringement would not apply if that is done. So that a premium will be put upon registration to a degree that does not exist at the present time, because at the present time you need not register unless you wish to bring suit, as far as published works are concerned, and that is one of the chief underlying and, it seems to us, rather essential reasons for having clauses of that sort in any measure that you enact in connection with our going into the Berne convention."

...

"Now, Mr. Solberg also pointed out, as a criticism of this bill, the language in sections 36 and 58, which expressly provide that there is to be no discretion in the Copyright Office to refuse to register or to record instruments that are presented. He criticized that on the ground that imperfect instruments might be presented, or, as I recollect, that signatures might be lacking, and there again he seemed to me to miss the very object that is sought here. It is of no importance, as far as the present inquiry is concerned, as to whether or not an instrument is perfect or not,

or as to whether or not it is effective or not. To him the importance is that notice is given him by that registration that somebody is making a claim that may or may not be adverse to him. So the more that is put on record, whether perfect or not, the more opportunity he has to ascertain whether or not he is safe in proceeding.

...

"But the point I wish to specially make there is that nobody can be harmed by having papers put on record, whether or not they are valid or effective. They give no rights, but they simply constitute record notice of the assertion of a right, and hence they give notice and information to those who might be affected."

41a. U.S. 69th Cong., 1st Sess., House Hearings on H.R.10434 (1926) p.120.

41b. Id. at 246.

42. Mr. Jaffe, of the Authors' League, said (p.22) "We think, on the whole registrations question no valid objection could be made to the patent law. The subject matter is fully and adequately indexed in the Patent Office, and a search can be made to find out whether a particular invention has been registered in the Patent Office previously..."

43. The answers received were summarized in Dunne, Survey of Substitutes for a Registration System Used in Berne Union Countries, 22-29 (1956).

44. U.S. 76th Cong., 3d Sess., S. 3043, Sec. 14-17 (1940).

45. U.S. 86th Cong., Rec. 1686 (1940).

46. An interesting example of the use of the registration system as a check on possible conflicting claims was made by the then National Association of Broadcasters in 1936-37. Broadcasting stations were buying licenses from ASCAP and SESAC at the time but the Association was doubtful whether the stations had need of SESAC music which at the time contained much little-known foreign music, and whether the price asked for it was reasonable. SESAC had started a number of infringement suits against broadcasting stations. (See supra note 40, at.475). Moreover SESAC claimed the right to license certain works which were by composers known to be members of

ASCAP. The NAB felt they were entitled to know what they were buying but could not get a list of the individual works controlled by either society. Accordingly, NAB itself compiled from the Copyright Office records the copyright history of the publications of each firm listed as affiliated with SESAC. (Society of European Stage Authors and Composers, Inc., NAB Reports, Aug. 18, 1937). SESAC made alterations in its catalog in consequence of the compilation, acquired licensing rights in some categories of American music not held by ASCAP and is today primarily a licenser of American music.

NAB apparently felt satisfied that the compilation had been worthwhile. It also said (p.3):

> In fairness both to the creator of music and to the users of music, the law should prescribe some form of registration which will make known to all concerned the true owners and their authorized agents in all copyrights. In the absence of complete and authoritative information from each musical licensing society concerning its repertory the user has only the remedy of avoiding the use of any music in question.

The problem outlined above is perhaps more pointed in the United States than abroad because here there are three collection agencies in the music field, ASCAP, BMI, and SESAC, whereas there is usually only one (in a particular field of rights) in each country abroad. BMI and ASCAP have since issued catalogs of the individual titles controlled by them, but they are not frequently issued.

47. The registration entries prepared in the Copyright Office are intended to reflect the necessary facts given in the copyright application and on the work itself so that searches can be made from the files without the necessity of consulting the work or application. The work is described by author and title (or if a title is lacking on the work, by the title and description supplied on the application), and by any other element of identification which may be necessary for the particular class of work being registered. The chronological registration number given each work and its application also serves as identification. The class in which a work

is registered (according to 17 U.S.C. §5) in general categorizes the work, as, for example, a literary work, periodical, drama, etc. If the copyright application refers to the work by a different form of title than that appearing on the work, or indicates previous registration under a different title, the fact is shown in the entry. It is possible to locate the entries under the title, and names of authors or claimants, depending on the class of material.

At the end of fiscal 1957, the files contained approximately 20 million cards relating to approximately 9 million registrations. The annual increase during the last five years averages 1 million cards representing over 200,000 registrations. Since this file includes all registrations made in any class it is possible to trace the ownership of a given property through several versions or adaptations, such as the evolution of a novel into a dramatico-musical, into a motion-picture, with, perhaps, publication of the songs as sheet music. This is undoubtedly one of the greatest advantages of a copyright registration system. Also the registration system makes possible the compilation in book form of all copyright registrations for a certain period, thus making it possible for the copyright registrations to be examined without recourse to the actual files in the Copyright Office and are used as a preliminary search tool by copyright interests and by the public in libraries. (See answers to questionnaire circulated in 1957). At present these printed catalogs do not include records of assignments and licenses.

48. The registration entry always shows the name of the claimant at the time of registration. 17 U.S.C. §29-31, 215 provide for the recording of all subsequent assignments. Licenses are not specifically provided for in the law but the Office records any license, mortgage, power of attorney or other paper sent in for recording. There is, of course, no systematic way for the Office to find out what assignments should be recorded and so request compliance. The number of entries in the assignment file is approximately 417,550 individual titles for the period 1927 to date.

49. The application forms provide for the identification of the copyrightable matter in each work registered, if copyright is not claimed on the whole work, and

the statement is incorporated in the registration entry.

50. Each registration entry or record of transfer of rights indicates the date on which the copyright term began or the transfer was effective. Under the 1909 Law it is thus possible to determine exactly when the term of protection will end.

51. The Examining Division of the Copyright Office not only ascertains that the application, deposit, and fee required for registration have been submitted but also compares the facts stated on the application with those given on the work itself, to see that they agree, so that the certificate issued to the claimant as prima facie evidence of his claim will be as free of error as an examination of the documents will make it. The amount of correspondence conducted by the Division in regard to discrepancies discovered, or facts not given or incorrectly stated averages 12% of all applications received (the percentage varies in different classes), which gives some indication of the need for such examination. Since it is in the interest of the applicant to present the facts correctly, the presumption is that an applicant will do so unless he does not understand what information is called for. In view of the great number and variety of works deposited for registration, the Office does not, of course, make any examination for plagiarism. As examples of some of the routine questions on which the Examining Division has correspondence, see Circulars 60, 53, 53A, 53B, 15F attached as appendix.

52. The Copyright Office has always felt that the registration record was an advantage to the author and to the public and that, in cases of reasonable doubt registration should be made. Mr. Solberg, testifying on the Vestal Bill (U.S. 71st Cong., 3d Sess., H.R. 12549 (1931) p.234 said: "The Copyright Office always leans toward registration. But there is a distinct obligation to keep within the bounds imposed by the law and to regard the decisions of the courts in determining what articles are protectable. It is one thing to contend that the Register of Copyrights should not exercise "judicial discretion," which has never been contended for, and quite another matter to enact a provision of law

that will compel such procedure as will inevitably destroy the authenticity and integrity of the copyright records.

"There has been a long and persistent endeavor in the Copyright Office to secure reasonable consistency and accuracy in the copyright claims recorded. Many applications received are submitted in a form clearly due to clerical ignorance and carelessness and obviously should be corrected before registration is made. The files of the office would disclose very many letters from leading publishers expressing appreciation of the service rendered by the office in its careful and painstaking scrutiny and examination of the documents submitted, and thanking the office for the opportunity thus to secure that correct record of their claims which they have desired.

"It has always been the purpose of the Copyright Office to serve the public by pointing out to applicants their frequent failure to observe the express requirements of the law, on which their protection depends. It is not believed that clients of the office in general desire to have this useful service cease or to have its value destroyed by compelling the office to make thousands of defective registrations."

Col. Bouvé, (in his Annual Report of the Register of Copyrights...1941, p.17) said that "(1) registration will be made unless he [the Register] is convinced that he has no authority to permit it; (2) that registration will not consciously be accomplished when he is convinced that registration is forbidden by the act. Registration, when properly accomplished, is anact performed to the direct advantage of the copyright owner, as opposed, temporarily, to the direct interests of individual members of the public, in the sense that it is prima facie an official confirmance by the government of the copyright monopoly. When registration is properly denied, such denial is an act which operates as a government affirmance of a public right of unrestricted use in the material involved. Thus there is in the opinion of the undersigned imposed upon him the duty of never consciously losing sight of the interests of the copyright owner on the one hand or those of the public on the other."

Mr. Fisher in his article The Copyright Office and the Examination of Claims to Copyright (In 1953 Copyright Problems Anakyzed, p.15-18) discusses the various aspects of the policy in regard to the registration of doubtful claims.

53. Circulars 39 and 39B attached as appendix illustrate circumstances in which the Office will register but warn the applicant of possible inadequacy in the notice. Circular 39B is used when an application is submitted prior to publication. Circulars 3, 3A, 3D, 38 are examples of cases in which works are rejected because of failure to comply with notice requirements.

54. These works account for the largest number of rejections for the two years in which the Office has prepared tabulations of rejection. Over one-half of the 2500 rejections in 1948/49, and 1715 of the 2974 rejections in 1952/53 were of this type. Particularly there seems to be a desire to establish priority by registration for ideas, synopses, etc., for dramatic works and motion pictures. The Authors' League in New York has a registration bureau for these. The Radio and Television Writers Association in London is currently considering the establishment of such a file, which the League of Dramatists and the British Screen and Television Writers Association already have for the registration of plays and film scripts. (The Author, Summer, 1957, p.91). See also Circulars 19, 17A, 32 attached.

55. The great importance of preserving the cultural heritage of a nation, and at the same time enriching the national library, has long been generally recognized. In countries without a registration system, the deposit is accomplished by the laws of legal deposit (i.e., the obligation to deposit one or more copies of certain kinds of published works for the benefit of designated libraries) which originated with Francis I of France in 1537. (Cf. Dunne, Survey of Substitutes for a Registration System Used in Berne Union Countries, 15-20 (1957) and works referred to therein). The two copies required under the 1909 U.S. law are a modest demand in comparison with the number required in some countries (e.g., Great Britain in spite of publishers' protests still requiresfive copies to enrich as many libraries). Failure to deposit copies under legal deposit laws ispunishable by fine but does not affect the copyright status of the work. The national bibliographies, of

growing importance in the exchange of cultural materials, are based on the deposits.

The Library of Congress (under 17 U.S.C. §213, 214) is allowed to make a selection of the works deposited for copyright, for its permanent collection. This is done to relieve the Library of the burden of keeping material which has little or no permanent cultural value. In practice, the material so selected is greater in scope and quantity than is provided for in the legal deposit laws of most European countries. A chart showing the materials selected is attached as an appendix for comparison with tables in Dunne, Memo on Legal Deposit Systems in Europe (1955). As a result of this deposit the Library automatically receives virtually all the trade publications in all fields covered by copyright, without cost either for the purchase of the materials or for staff to discover and order them. The system has enabled the Library to acquire many now rare items, for it is oftentimes difficult to assess the long-term value of a work, and libraries seldom buy a work in which immediate value is not recognized.

56. Cf. Dunne, Survey of Substitutes for a Registration System Used in Berne Union Countries (1957), p.7, SACEM puts its seal on unpublished mss.; p.16, the certificate of legal deposit creates an "etat civil;" p.22, Mr. MacGillivray's remarks on the value of prima facie evidence; p. 25-26, remarks of the British Copyright Committee of 1951 on "onus of proof."

57. 17, U.S.C. §12. In effect, all works except books, periodicals, maps (which are sometimes registered in class I as unpublished scientific drawings); reproductions of works of art (but registered as unpublished works of art), and commercial prints and labels.

58. In 1956 the figures were for: dramatic works, 662 published, 2, 907 unpublished registrations; music, 18,231 published works; 40,099 unpublished; works of art, 2524 published, 1643 unpublished; scientific drawings, 641 published, 483 unpublished; photographs, 1013 published, 392 unpublished. The number of unpublished works in the motion picture classes were negligible. One of the factors contributing to the numerical superiority in the drama and music classes is the fact that several versions of one work may be registered before it is published.

59. In 1948/49, 361 applications of this type were received; in 1952/53, 210 applications. The Shotwell Committee reported (supra at note 45.) that it found "authors have long complained of inequities of the present system, whereby certain works...may be protected when deposited and registered in the Copyright Office before publication, while others may be protected only after they have been published with notice, that fact registered, and two copies deposited in the Copyright Office." Apparently the reason for the "inequity" is that at the time of drafting the 1909 law only the interests concerned with oral, musical, and artistic works expressed interest in the privilege of registering before publication. It may be that the benefits of registration are more apparent when they are not available.

60. Salzman, Plagiarism, 261-262 (1931). "Should an author be prompted to accuse another of having stolen all, or any part, of his literary work, the first point that he himself will have to establish - in the court of law, or elsewhere - is that he originated it. To do this, he may aid himself by proving that at least on a certain date he claimed to have been the author of the work; and that he may most easily and authentically do by presenting a certificate of registration issued by the Copyright Office, which will prove that point. And it will follow, as stated by the opinion of a court, that, 'The copyright is prima facie evidence that he was the author, and the burden of proof is upon the defendant to show the contrary.' And it is in that respect, and only for that reason, that copyright is said to protect the author against encroachment. Not forgetting, naturally, that the fact that a work is copyrighted is a deterrent only, not a guarantee, against plagiarism."

61. The study made by Rogers on Uses of the Copyright Records and Catalogs (1957) shows (table 2) that 21% of the inquiries coming to the Office are made by creators or their heirs. Songwriters are the predominant users. The uses authors make of the record as shown in Chart 7 appear to be 1) Verify or complete a personal record; 2) Negotiate a contract; 3) Initiate legal action; 4) Determine when renewal should be applied for; 5) Identify properties belonging to an estate.

62. The number of searches made to secure the authors' permission to use was fairly high - 6.6% (Id. Chart 7). To this might be added the 4.9% of searches which sought to locate an author without stating why they wished to locate him. The Rogers study is concerned only with the searches made by the Copyright Office staff in the Office files. Interviews with representative publishers of copyright materials on their use of the Catalog of Copyright Entries indicated that in limited fields such as music and dramas publishers read the catalog to discover works that they might want to publish or acquire rights to. Inasmuch as most of the searches originating in the motion picture and radio field are done by private firms using the Office records, the use of the records to secure rights or acquire properties would be much higher than the Rogers study indicates.

63. Rogers' study (Id. Chart 7) shows that only 2.4% of the inquiries coming to the Office were concerned with the determination of the time when renewal registration should be made. It is more expeditious to use the annual printed catalog for the class of material concerned for this purpose. Publishers and authors' societies have indicated that they do use the Catalog of Copyright Entries systematically for this purpose. (See answers to questionnaire on use of copyright, and the report on the Songwriters' Protective Association in Rogers' Supplement and Travel Report, Visit to New York, Jan. 16-18, 1957, p. 10.)

64. 17 U.S.C. § 214.

65. Rogers, A Brief Description of Copyright Office Records, 17 June, '57, p. 4 tabulated the number of requests for a photostat copy of the deposited work received during Feb. 1957. Of the 79 requests, 42 were for unpublished music, 4 for addresses, lectures, etc., but 33 requests were for copies of published works. He says, "An important but not exclusive use of such copies is for evidence in litigation." The figure is of considerable interest since the use of copies after deposit in copyright business has sometimes been questioned. This figure, which would indicate an annual use of approximately 1000 works a year, does not include use of the works which have been transferred to the Library's collections, for which figures are not available.

R. Ould, a patent attorney, made a statement on the use of deposit to maintain suit, in the 1936 General Revision Hearings (supra, note 40, at 1386):

> The deposits are important not only to maintain the collections of the Library of Congress complete, but also as a matter of legal record to define the copyright property which the author claims the right to exclude the public from. In copyright infringement suits, from time to time it becomes necessary to prove under established rules of evidence, the exact contents of the work which was entered and deposited in the Copyright Office. If such work is in the collections of the Library of Congress, with the stamp of the Copyright Office thereon, such proof is simple. If such work is one of the 60,575 works returned to the claimant during the fiscal year 1935 under section 60 of the 1909 act, the proof may be much more difficult, but if the claimant has retained the officially stamped deposited copies which were returned to him, he at least can produce them for evidence. But if no copies were ever received and stamped by the Copyright Office, any litigant is faced with a very difficult task in proving just what was the contents of a work which was the subject of copyright on a given date.

66. Louis Caldwell, presenting the position of the National Association of Broadcasters, listed (1936 Hearings, Id., p. 469) as the first of the important points to be provided for in any copyright legislation "a trustworthy and practical means by which copyrighted works can be distinguished from works in the public domain, and by which the ownership of performing rights in copyrighted works can be ascertained."

67. According to the Rogers' study (supra, note 61) the primary use of copyright records is economic. Dr. McClure, of the State Department, said (supra, note 40, at 1057):

> The public and the user of copyrighted works are deserving of consideration. From their point of view registration is desirable. Copyright is a monopoly.

The Constitution specifies that it is to be enjoyed by authors for limited periods. These periods come to an end. Registration not only furnishes some guide as to the works in which copyright is currently claimed, but helps a prospective user of a literary or artistic work to know when copyright has expired.

The assertion has been made that registration is unimportant because anyone knows whether a literary or artistic work belongs to him or whether it does not; hence he should not copy it until he has received the author's permission. Such an assertion is inexact. Works in which copyright has expired, or is not claimed do belong to anyone who cares to use them. It is good public policy to keep as careful account as practicable of the works that are protected by the copyright monopoly and of those that are not.

68. See Middleton, Nine Lives of a Manuscript in the Authors' League Bulletin, March, 1927, p. 15. Note also that this article was written prior to the extensive use of radio and the advent of television, both of which have increased the use of copyright properties tremendously.

69. See Rogers, supra, note 61, Chart 10 for report on continued interest in older properties.

70. Note that ASCAP and BMI in case of litigation do not rely on their own records but always request a Copyright Office search report on the work in question. (Cf. Rogers, Records Maintained by ASCAP and BMI, 20 June, '57, p. 2).

71. Supra, note 40, at 1387.

72. Cf. Dunne, supra, note 43 for details of these records, summarized here.

73. In 1928, George Middleton, then president of the Dramatists' Guild, attended the Congress of the International Confederation of Authors and Composers

at Berlin and received such a new insight into European trade habits that he wrote a series of articles in the Authors' League Bulletin in the issues of June, September, 1928, January, February, 1929. He reports on the "cartels and syndicates" mentioned by Mr. Oulds. Especially see the Feb. 1929 issue (p.7) for the report on Societe des Auteurs et Compositeurs Dramatiques ..."every dramatist whose play is produced in France, whether he be French or foreign, must of necessity be a member of the Society. While it is true a manager may produce a non-member's play, should he also wish to use the Society repertoire and have so contracted for it, he must not only pay the standard royalty to the Society but in addition he must pay a further royalty to the author. To produce the play of a non-member said director would, therefore, possibly have to pay double royalty! ... Though legally he may, practically he doesn't select dramatists outside the fold. The plays of members, in turn, cannot be presented in any theatre or by any touring organization in France or countries in which the French language is spoken (Belgium, Monaco, etc.) unless they have signed the Agreement (Conventions) with the Society. Note that this broad Society Agreement is made not with the manager but with the theatre he represents; if the management changes, these conventions still stay in force and the individual contract for plays must, in theory, be recognized by succeeding managers.

...no French dramatist can really hope for production unless he is in the Society; he joins willingly because he must and because it is his only protection. ... Yet, the author, too, must obey the rules; for all royalties are sent by the theatre direct to the Society (not to the author) and such royalty can be withheld by it for infractions of its rules. ... Hence the Society's power is one that protects and embraces fondly when observed; but cuts to the bone once effort is made to break away." (For the situation at that time in regard to the influence of German and Austrian theatrical Verlag (editor-agent) on play production see issue of Sept. 1928, p. 5). In regard to foreign membership in the S.A.C.D. (Feb. 1929, p. 14) Middleton says: "But no foreign author can obtain the royalties due him unless he signs a pouvoir giving the Society authority through its agents to make such payment. If this is not done the royalty remains the property of the Society -- which is why it is practically impossible for a foreigner to remain outside. In this connection I found, upon investigation, that American agents and authors did not take this precaution or were ignorant of it; which explains why some American

authors had not received royalties due them. Where the foreign society has the above agreement with the Society this individual pouvoir is not necessary; but ... individual membership is highly desirable since the pension system is not limited to French authors alone..." In the issue of June 1928, p. 15, he indicates the same situation is true with regard to other European countries; for example, in answer to an inquiry about non-payment of royalties to an American author on a play produced in Spain, he was told "the money was in the Society's keeping awaiting the registration of the contract."

74. The following is an excerpt from a résumé of a conference held June 19, 1947 between Mr. Sam Warner (then Register of Copyrights), Mr. Arthur Fisher (then Associate Register of Copyrights), and Mr. Edward B. Saher (then Adviser to the Netherlands Embassy and President of the Netherlands Book Committee):

> "In a brief discussion regarding the copyright law of the Netherlands and of the United States, Mr. Saher indicated he thought the American law much superior. He said the Berne Convention was passed before the day of income tax returns and before people were used to filing, and that it was passed with the interest of authors only in mind. Our law is much better because it requires notice and registration. It is difficult to persuade a nation to accept a regime of notices and registrations, but Americans have done that, which is something other countries have not been able to accomplish. The Americans under no circumstances should change their method in favor of the more primitive and less satisfactory method provided for in the Berne Convention."

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DISCUSSIONS OF REGISTRATION IN THE MEETINGS

of

UNESCO'S COMMITTEE OF EXPERTS

(prior to the formulation of the Universal Copyright Convention)

by

Elizabeth K. Dunne

July, 1957

SUBJECT

DISCUSSIONS OF REGISTRATION IN THE MEETINGS

of

UNESCO'S COMMITTEE OF EXPERTS

(prior to the formulation of the Universal Copyright Convention)

The problem of registration as a formality in connection with international copyright received some consideration at the various meetings of the Committee of Experts on Copyright called by UNESCO to consider whether a new Convention for the regulation of copyright was necessary and desirable, and, if so, to make recommendations regarding the principles to be incorporated in the Convention.[1]

The report of the meeting in Paris, July 4-9, 1949, says:[2]

> The Committee's deliberations were motivated by the belief, which the Director-General eloquently set forth in his appearance before the Committee on July 6th, that Unesco's concern, namely, the promotion of peace through understanding and the spread of education, science and culture to all the peoples of the world, requires more than anything else, as concerns Copyright, the improvement of the conditions which make it possible for the creative "élite" to fulfil its function of the creation and the dissemination to the peoples of the world of literary, artistic and scientific works. The Committee took into account not only the problem of the creator's interests but also the interests and needs of the world public.

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1 Unesco Copyr. Bul. v. 2, 2/3, 1949, p. 154.

2 Ibid.

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> From the early presentation by Mr. Crewe [of England] of his proposal for national treatment, which furnished the foundation for the Committee's resolution, the Committee was persuaded of the necessity to set forth principles calculated, above all else, to secure the adhesion of the greatest number of states, whether members of the Berne Union or not, to a Convention which would provide at least a minimum base of national treatment, with certain reservations in individual cases. ...
>
> It was insisted by Mr. de Sanctis and other Experts that a Convention restricted to national treatment without specific minimum standards of protection in such matters as persons and works protected, duration, formalities, translations and sanctions, would be wholly ineffective and unsatisfactory. The discussion of this matter occupied a substantial portion of the Committee's time, and served to crystallize many of the fundamental issues which must be dealt with at the various stages in the development of a new universal Copyright Convention.

At the third meeting of the session July 5, Prof. Lund[3] said that what the authors who were nationals of small member countries of the Berne Convention expected and wished was the introduction of some flexibility into the formalities required by American countries, and protection in those countries which had not adhered to the existing conventions. He thought efforts should be made to continue the work done before the war by the Belgian Government and the International Institute of Intellectual Co-operation, "which dealt in particular with a system for simplifying formalities either by ceasing to demand the

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[3] Ibid. at 182.

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registration of books and accepting a statement in the book itself, or by establishing a joint registration office with its headquarters, for instance, in Berne."

"Independantly of all theoretical considerations, Mr. de Sanctis[4] thought that the question of formalities would not constitute an insuperable obstacle to the stipulation of a universal convention. It must be admitted that the mention of a reserve for certain categories of works, and even the registration of certain contracts for the transfer of Copyright, might be of considerable importance to certain industries and to the general public. There remained the question of the depositing of the work according to the law, and that could be solved, in view of the recent North American [Washington Convention] draft law, by exchanges between libraries in the various countries in connexion with formalities entirely different from those intended to constitute a formal condition for the protection of the work."

At the fifth meeting, July 6, 1949, Mr. de Sanctis said further that "he was against deposit but was in favour of the Copyright notice and dates of publication for a certain category of works, such as written, cinematographic and photographic ones as that would introduce greater

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[4] Ibid. at 184.

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morality into the market."[5]

The Recommendations of the Committee of Experts at the Washington meeting, Oct. 23 - Nov. 4, 1950, resolved the question of formalities thus:[6]

> (D) To mitigate the obstacle of formalities there should be the following provisions in the Universal Copyright Convention:

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[5] Ibid. at 208. One of the chief objections to registration in regard to international copyright seems to be the demand for deposit of copies. Cf. Mr. Mentha, Director of the Berne Union, in his article The Berne Union and the Question of Formalities (Unesco Copyr. Bul. v. 3, no. 1, 1950, p. 45-47) "This is particularly true when it means that they are spared the more or less lengthy and onerous procedure of deposit and registration. That is a point which has possibly not been sufficiently emphasized. In some South American countries, the number of copies to be handed over, free of charge, to the appropriate authority, is comparatively large; an author living abroad, and even in another continent, may find some difficulty in sending them; furthermore, if registration after deposit is not free ... a payment of foreign currency has to be made, giving rise to further complications. ...We must therefore admit that the grant of protection without deposit and registration is a favourable solution from the author's point of view." He supported the provision for an international notice.

[6] Unesco Copyr. Bul. v. 3, no. 3/4, 1950, p. 10.

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(1) Each contracting State in which the existence or recognition of copyright depends upon a condition of notice, registration, deposit, payment of fees, notarial certificates or any formal requirement whatsoever shall in the case of a published work which falls within paragraph (C) (1) above and which is not excluded by paragraph (D) (3) below regard all such requirements as having been fully satisfied if the proprietor of the work shall signify his intention not to dedicate the work to the public by affixing from the time of the first publication of the work to all copies of the work the symbol © accompanied by the name of the author, or other proprietor, and the year of first publication. The notice shall be placed in a manner and location designed to give reasonable notice of reservation of copyright.

(2) The provisions of the above paragraph (1) shall not preclude any contracting State from providing that a person seeking judicial relief must comply with procedural requirements, such as that the complainant must appear through domestic counsel or that the complainant must deposit with a court or administrative office, or both, a copy of the work involved in the litigation.

(3) Any contracting State may exclude from the advantages of paragraph (D) (1) above any work which was published for the first time within its territory or any work which was published at any time or at any place by one of its own nationals.

The recommendation was based upon the proposal of the United States delegation, presented by Mr. Wyzanski, which was received with approval, since the formalities

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required by the United States law were regarded as one of the serious obstacles in the way of the Convention.[7]

Mr. Blake[8] said that the statement of Mr. Wyzanski was of such great importance for the United Kingdom that he would like to say a few words. ...He considered the proposal as a major step on the road to a successful Universal Convention. If it were adopted, registration would not be necessary in any country as a condition precedent for the securing of copyright but would be only a procedural step, a fact with which he was well content. He hoped, however, that this would not be a starting point for any extension of compulsory registration, even, at an international office, as had been suggested [referring to Mr. Sen-Gupta's proposal infra].

During this meeting Mr. Sen-Gupta of India proposed that an international system of registration be set up. He pointed out that India "required the deposit of three copies of every printed work, which almost constituted registration."[9] He also observed that "an efficient registration system clearly simplified the question of proof in copyright matters. He suggested, therefore: (1) that the proposed Convention prescribe some formalities of registration; (2) that the conditions not

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[7] Ibid. at 18, 55.

[8] Ibid. at 57.

[9] Ibid. at 40.

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be onerous; and (3) that such requirements would not be a condition of copyright but should only be required before legal action could be instituted. He also suggested that a file of copyright registration be maintained by Unesco."[10] Copies of his proposal were distributed to the Experts.[11]

> Each contracting country shall adopt provisions concerning a system for the registration of copyrights acquired in that country, provided: (a) Such registration shall not constitute a condition for the acquisition of copyright but will constitute only a prerequisite for instituting a legal proceeding with respect to the work; (b) The conditions of registration shall not be onerous and should essentially consist only of a simple copyright notice, the deposit of copies and a reasonable registration fee as well as other conditions considered to be necessary by the country with respect to its own nationals.
>
> One copy of each entry in the copyright registry will be sent to Unesco's office, which will maintain, if practicable, a registry containing a complete list of all works copyrighted in the contracting countries.
>
> A copy of the entry in the Unesco registry will be considered in all contracting countries as a conclusive proof of the existence of copyright in the work (other than that of a national of the country or a work published for the first time in the country) and will be protected in the said country in the same way and to the same extent as the works of a national of the country or the works published for the first time in the said country.

Mr. Recht[12] of Belgium stated that he did not believe that there should be a provision concerning registration in the Convention. He pointed out that an international convention supplanted internal law and that his

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[10] Ibid. at 57

[11] Ibid. at 79

[12] Ibid.

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country had always been suspicious of administrative controls in copyright. Mr. Fisher[13] commenting on Mr. Sen-Gupta's proposal said that in the United States registration had hitherto been a part of the copyright law and it was thought that registration facilities the free flow of information and the presentation of evidence during the course of litigation, but said that more study of the financial and administrative problems involved in Mr. Sen-Gupta's proposal was necessary and suggested that the Unesco Copyright Division make such a study. Mr. Recht[14] said he did not intend to criticize the U.S. Copyright Office and "recognized that countries having certain formalities probably fared better than those who had none. National habits and sensibilities, however, could not be overlooked." A system of registration is not essential to an effective system of international bibliographies. He opposed Mr. Sen-Gupta's proposal, not only because there was little likelihood of its being adopted by several countries, but particularly because procedure and evidence were primarily matters of internal law rather than international agreement. The Chairman, Mr. Bolla,[15] "pointed out that there were two systems in the world today; one requiring formalities and one not requiring formalities. He warned the members of

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13 Ibid. at 80.

14 Ibid.

15 Ibid. at 81.

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the Committee against endeavouring to convert experts of one group to the position of the other, as this would be a waste of time. He believed that Mr. Sen-Gupta was not trying to introduce formalities but on the contrary suggested very plainly that Unesco should keep a general inventory of the creations of men. This fell outside of copyright but Unesco was interested in all things concerned with culture. For that reason it should be referred to Unesco for further study. Mr. Sen-Gupta[16] expressed his willingness to qualify his proposal by inserting that it would be 'desirable for each contracting State to make provisions for a system of registration.'" "The Chairman stated in effect that this would be a voeu."

Mr. Chediak of Cuba,[17] commenting on Mr. Wyzanski's proposal, stated that in regard to the second part of the proposal relating to deposit for procedural purposes only which seemed to provide for more favorable treatment for foreigners than for nationals, the Committee should try to find a way to eliminate this. "He suggested, furthermore, for those countries which maintained a system of registration, that the registration office of the country of origin should provide free of charge the necessary documentation for registration. Countries requiring registration should have a simplified procedure. As to the

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16 Ibid.

17 Ibid. at 59.

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second part, the proof that formalities had been complied with should also be simplified. Thus, the interchange between countries would be facilitated."

These appear to be the statements of importance on registration at the meetings.

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SURVEY OF SUBSTITUTES FOR A REGISTRATION SYSTEM USED IN BERNE UNION COUNTRIES

by

Elizabeth K. Dunne
Research Analyst
Copyright Office

June, 1957

SUBJECT

II. SURVEY OF SUBSTITUTES FOR A REGISTRATION SYSTEM USED IN BERNE UNION COUNTRIES.

A. Abandonment of compulsory formalities and current status of registration in Union countries.

At the time of the formation of the International Copyright Union in 1886 the domestic laws of most countries provided for registration either as a condition of securing copyright or on a voluntary basis. The International Copyright Convention of 1886 provided in Article 2 that enjoyment of the rights conferred by the Convention should be "subject to the accomplishment of the conditions and formalities prescribed by the law of the country of origin of the work."[1] In 1896 the Interpretive Declaration of Paris clarified the statement by providing that copyright in any of the Union countries should depend on the conditions and formalities of the country of origin "solely."[2] It was found however that under this provision a foreign author was obliged to prove that the work for which protection was claimed was entitled to copyright in the country of the Union where it was first published, that it was often a difficult matter to produce the necessary evidence with regard to foreign law, and that it was often very difficult for judges to try cases depending on foreign laws (especially if the laws were not explicit). The result was to prolong the case and to expose authors to the risk of losing their case even against flagrant infringement, and, consequently, to imperil the functioning of the Convention. On these arguments[3] the German Government proposed that the Berlin Conference of 1908 change Article 2. The Convention adopted as Article 4 the following text:

> Authors who are subjects or citizens of any of the countries of the Union shall enjoy in countries other than the country of origin of the work, for their works, whether unpublished or first published in a country of the Union, the rights which the respective laws do now or may hereafter grant to natives as well as the rights specially granted by the present Convention.
>
> The enjoyment and the exercise of these rights shall not be subject to the performance of any formality; such enjoyment and such exercise are independent of the existence of protection in the country of origin

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of the work. Consequently, apart from the express stipulations of the present Convention, the extent of protection, as well as the means of redress secured to the author to safeguard his rights, shall be governed exclusively by the laws of the country where protection is claimed ..... [4]

The delegate of the Belgian Government after supporting the proposal in paragraph 1 above noted that the change in paragraph 2 was necessary for the protection of foreign authors, and since in countries where formalities were required this would extend more protection to foreign authors than to native authors, formalities should be abolished.[5] (There was otherwise little discussion of paragraph 2 in the official accounts.)

The British Copyright Committee of 1909 used the same arguments (above) in announcing their decision to recommend the abolition of the registration requirements which they found to be "anomalous, uncertain, and productive of great disadvantage ... to authors with little or no advantage to the public."[6, 7]

Of the Berne Union countries today only Spain has compulsory registration (for domestic works). Registration is required as a condition for bringing an action in Turkey, Lebanon and Syria. Registration is optional (that is to say failure to register does not result in loss of rights) and has effect as <u>prima facie</u> proof in Australia, Brazil, Canada, Italy, New Zealand, Portugal, and the Union of South Africa.[8] India has compulsory registration of books first published or printed in India under the Press and Registration Act of 1847.[9]

Some countries have special registration for certain types of materials:

Belgium and Luxemburg - Compulsory registration of posthumous works, publications of the State or of public administration; optional registration of designs and models.
Canada - Compulsory for licenses.
Denmark - Compulsory for photographs.
France - Optional registration for identification of works of art, registration of contracts and judgments concerning cinematographic

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films, compulsory declaration to obtain the benefit of "droit de suite."

Ireland - Voluntary for artistic works.

Japan - Optional registration of date of "production" of a work; assignments of copyright; publishing contracts.

Great Britain has compulsory registration of films under the Cinematograph Films Acts of 1938 and 1948.

Registration of anonymous works and the pseudonyms of authors in order to obtain full term of copyright (i.e., so many years after the death of the author rather than so many years from publication) is optional or compulsory in Austria, Finland, Germany, Hungary, Italy, Japan, Portugal, Sweden, Turkey, Yugoslavia.

B. Means by which facts necessary for conducting copyright business is determined in Berne countries.

It has frequently been said that in the Berne Union countries copyright without the formality of registration has been very successful. Some of the demands to which the U. S. registration system responds must, however, be met in some way in these countries since the needs of creators, marketers, and general public are somewhat similar throughout the world. No article explaining the methods by which the facts are obtained has been found. So that insofar as the literature reveals the practice, an attempt will be made to survey some of the means by which countries without a registration system establish the necessary facts in regard to transfer of rights, ownership, determining whether a work is under copyright or in the public domain, etc., and the extent of the records kept.

The Unesco Questionnaire on Comparative Copyright Law (1948) included a question on the practical means of obtaining information for the transfer of rights. Dr. Arpad Bogsch (now of the U.S. Copyright Office), one of the compilers of the Unesco study, said the answers received were not complete enough in detail and not answered by enough countries to make an analysis useful. In regard to legal usage the Report[10] issued says:

> The problems concerning transfers of copyright are met in different countries by different branches of the law. The varying solutions may be found in civil law, commercial law, or in special laws.

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Moreover, in practice, transfers are made contractually, and freedom to contract involves a variety of problems and an equal variety of solutions. To give a complete picture it would be necessary also to consider commercial practices which vary with both time and place. Also to be considered is the fact that, in many countries, freedom to contract is more or less limited by standard contracts and rules of conduct laid down by Authors' Societies, rules which sometimes have official status.

M. Henrion[11] in his study for Unesco on the enforcement of authors' rights through authors' societies says:

It is to be added that the absence of the author would tend to confront the ultimate users of his work with very great difficulties, often insurmountable, in obtaining the necessary authorizations from him, difficulties which would tempt the users either to forego using the work or at least to limit its use and even (why not? - such things have happened!) to ignore the author's right in most cases with an assurance of almost complete impunity.

In order, therefore, to render the author's recognized exclusive right effective, the necessity arose for a practical material organization which would secure for authors the exact and normal exercise, through a serious control, of this right and which would be of such a nature as to assure a regular circulation of intellectual works in the greatest possible volume by enabling the ultimate users of their works to obtain the authorizations necessary to achieve this end with ease.

The cell from which this indispensable organization was to be built up was to be, in each country, a national organization of authors for the mutual protection, control and administration of their rights.

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1. Authors' societies.

Authors' societies claim for themselves the distinction of providing the "indispensable" means of protecting and exploiting the rights and properties of an author. (See Charte du Droit d'Auteur quoted below). There are two broad types of societies--those which as a primary function collect fees and issue licenses for the performance of copyrighted works, often referred to in this country as "performing rights societies," and those whose main function is to work for advantageous legislation and for improved business practices through the adoption of standard contracts, giving legal advice, etc. The performing rights societies, whose membership is composed of both authors and publishers, usually control the performing rights and conduct in the name of the society the business and legal matters in regard to those properties. The societies composed of the authors of non-dramatic literary works seldom collect royalties because for these properties the matter can be usually handled satisfactorily by direct negotiations between the author (or his agent) and the publisher.[12] The French Société des Gens de Lettres de France[13] does collect reproduction fees especially in regard to use in periodicals and newspapers, but the author retains his rights. It is the performing rights societies which have the organization necessary to fulfill the functions described below.

The Charte du Droit d'Auteur[14] adopted by the Confederation Internationale des Sociétés d'Auteurs et Compositeurs (CISAC) at its Congress in Hamburg, Sept. 21, 1956, affirms in Section 4 on The Function of Authors' Societies:

> 13. Authors' Societies, whatever their legal form, are organizations set up to administer the paternity rights of authors and their successors. They are not commercial organizations, nor is profit their aim. They withhold from the moneys collected by them only the sums necessary for their operational expenses. Accordingly, they should enjoy special legal treatment, particularly from the financial point of view.
>
> 14. Authors' Societies, because of the new ways of disseminating works, and because of the development of international exchange, have become indispensable for the determination, control, collection and division of performance rights, broadcasting, television and mechanical reproduction rights.

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> The value to society of their activities makes them simultaneously of service to authors, distributors and the general public.
>
> . . .
>
> 15. Without the aid of the Authors' Societies, the individual author would not be able to supervise the use of his works or enforce his rights. Thanks to their regulations on distribution of revenue, which eliminate private contracts of variable form and content, the Societies assure all authors safeguards for their prerogatives, and for the fruits of their creative work. Without Authors' Societies, the users of a work could neither be certain of the identity of the copyright proprietor, nor, consequently, secure the necessary authorizations. The close relations among the Authors' Societies of different countries, resulting from their reciprocal contracts, allow the authors of most countries to secure proper utilization of their works.
>
> 16. The Authors' Societies are organizations whose aim is to make possible the exercise by the author of certain exclusive rights in his work, which have been guaranteed by the law and by international conventions. The fact that the authorizations of all authors are concentrated in the hands of the Societies, does not therefore justify their being considered monopolistic in character.
> [Underlining throughout has been supplied]

The performing rights societies maintain files concerning all the works which they control, and these files would seem to be the best means of obtaining all kinds of information in regard to copyrights in the fields covered by the societies.

The German society for collecting music fees, GEMA (Gesellschaft für Musikalische Aufführungs- und Mechanische Vervielfältigungsrechte) has very extensive archives:[15]

> Music organizations occasionally express the wish that GEMA might publish an index of the works it controls. It is impossible

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from a practical standpoint because GEMA administers a world repertoire of several million works. Such an index would fill many volumes and would besides be out of date as soon as printed because new works are transferred daily, even hourly.

Examples of the forms[16] to be filled out concerning each work assigned to GEMA ask for as much or more information than U.S. Copyright records show.

The British Performing Right Society[17] maintains a card file by title, dating back to 1914. It also maintains a more recently established composer and author file. Samples of the forms to be filled out are attached as an appendix. A record is also kept (in a separate file) of personal data on all authors whose works are controlled by the society--consisting of full real name, date of birth (and death), citizenship, licensing organization affiliations, and pseudonyms. Mr. Grice, assistant general manager, says there is no difficulty in tracing the ownership of copyrighted works. A composer assigns his rights to the publisher (or for unpublished works to the Society). The publisher licenses the Society to clear the works for use. This Society also does not publish a catalog of the separate works which it controls. Complaints about this were made to the Committee on Copyright but the Committee said "We do not consider these complaints as being matters of substance."[18]

SACEM (Société des Auteurs, Compositeurs, et Éditeurs de Musique) which collects performance fees in France and abroad, either directly or through affiliated societies, has a centralized "documentation" which is explained in its annual report.[19] The Report gives a clear picture of the workings of such a society and the means of protecting the authenticity of its "repertoire." Included are the instructions for filing the "declaration" of his works each member must make to the Society. The "declaration" is obligatory as it is upon the declarations that the catalog of the individual member and the card files for the Repertoire are based; without the declaration no payments are possible. Members are asked to submit their works in manuscript before giving them to a publisher in order to assure the validity of their ownership of the work. All manuscripts should be in ink, legible and without erasures, because they constitute the original pieces authenticated by the seal of the Society. New arrangements of works by deceased authors may be declared by the publisher.

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Publisher members for their part must 1) deposit with the Society a copy of every newly published work; 2) send their catalogs, which constitute the most useful element for the establishment of the repertoire of the Society; 3) conform to Art. 21 of the Statutes of the Society with a view to safeguarding the rights of authors and composers abroad by printing on the cover, on the title-page, and on the first page of their published works (and also on orchestral parts, particularly on the conductor's parts) the notice that the "Droits d'exécution" are "réservés." Publishers are also asked to indicate for which foreign countries they hold the rights in a particular work.

Proof of transfer of rights of members is required. Heirs and widows of members before they can receive sums due to the account of deceased members must first justify their titles, rights and qualifications (acting through one person as agent) before the notary of the Society. The notary will indicate the documents needed and the formalities to be fulfilled. Grantees cannot receive funds until they have given proof of their grants.

The Society conducts all the business in regard to the properties. Members must do all their business with the Society through the Director-General. Any correspondence sent to a member personally by a "tributaire" seeking to obtain special favors or to ask intervention in the collection of fees or legal proceedings against unauthorized performances should be transmitted to the Director-General who alone has the right to reply. Agents are forbidden under penalty of immediate removal to make any personal transaction of any kind with "tributaires" or any member of the Society.

Members must inform the Society of any change of address.

The Society will handle, for a small fee, all the formalities connected with copyright in foreign countries. including registration and deposit in the United States, as well as the French legal deposit.

In an article on Le Plagiat Musical by Raoul Castelain[20] he describes the examination of new works submitted to SACEM (p. 48-50) as an example of what is done by the authors' societies:

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Technically the services of SACEM have at their disposal resources, a musical dictionary, a catalogue, so that when a member comes to deposit a work, the music inspectors can normally esteem whether there exists a counterfeit either by reminiscence, or by encounter, or by hidden plagiarism. When the opinion of the services of music inspection are in this direction, they warn the member, who, most of the time, admits the objection. On the other hand, the committee of composers can be called upon. This committee estimates the possible counterfeiting by making use of the data and general customs of the profession. In other words, although strict in its findings, the committee is flexible in the use of its means.

What is the effect of the findings of the Committee? Most often the composers acknowledge the point of view of their peers and accept the recommendation either to partially modify, or to change the litigious melody. However, certain members do not inevitably fall in with the Committee's opinion. In this case, the services of the SACEM can only bow to the determination of the member. However, the latter by rejecting the recommendation exposes himself in full knowledge to the possible consequences of the counterfeit committed. The courts will decide eventually on the rights or wrongs of the total or partial counterfeiter.

It is therefore easy to record that the societies of authors can only act within the scope of their statutes, that is to warn the members as to the relative originality of a work the deposit of which is effected. ...

As a matter of fact, it is important to specify that almost all the possible differences between composers find amicable solutions and difficulties rarely come before the courts. ...

In summary, in the recording system of SACEM are evident the following elements of a registration system: deposit of the work both as an unpublished manuscript and as a published work together with a document identifying the work;

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authentification by the seal of the Society of the unpublished work as a means of proof of ownership; examination by the Society to avoid unfounded or infringing elements in the work; use of notice as a warning to the public on works to be distributed in other countries; validation of assignments and transfer of ownership to heirs; and a permanent file or catalogue of the works controlled by means of which information about the ownership and status of the work can be given to persons interested in the property.

The records of SACEM (which is one of the oldest and most vigorous of the societies operating on an international scale)[21] have been presented here at length because the information concerning them was readily available. For the purposes of this survey it is not felt necessary to examine in detail the functioning and the authenticity of the records of all performing rights societies. It seems safe to assume that all these societies maintain records of ownership in the works controlled which serve as the basis for distributing fees, and that they act in behalf of the author in legal matters and in granting authorizations. Whether they all inquire so carefully into all transfers of ownership, require deposit of the works, subject new works to examination, and require their members to put a notice on works distributed in foreign countries cannot necessarily be assumed. The fact that a work registered with such a society is prima facie proof of ownership is accepted in several countries. Published catalogues are usually lists of the names of authors, composers, or publishers whose works are controlled rather than lists of the individual works. How much the general public is allowed to make use of these archives directly has not been discovered in the literature.

In each country there are several of these societies but the type or organization, the field of rights covered, etc., vary. For example, in England there are:[22] The Performing Right Society concerned with "small rights" in musical works; Phonographic Performance, Ltd. enforcing the rights of gramophone companies in public performance; and "two other collecting societies whose activities do not generally come before the public eye": the Mechanical Copyright Protection Society and the Sound Film Bureau acting in the main with publishers, record makers, cinematograph companies and the B.B.C.

In France there are besides SACEM: Société des Gens de Lettres de France particularly interested in the

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reproduction of literary works in journals and revues but becoming broader in scope; Societe des Auteurs et Compositeurs Dramatique concerned with dramatic and dramatico-musical works; Societe des Orateurs et Conferenciers concerned with performance of oral works; Societe du Droit de Reproduction Mecanique concerned with mechanical reproductions of works; the Societe de la Propriete Artistique collecting royalties on graphic and plastic works and enforcing the droit de suite.[23] These are the best known ones but references have been found to other lesser known ones.

Inevitably some of these societies overlap in jurisdiction e.g., dramatico-musical works, and have to come to an agreement as to their areas of interest.

On the international level the national societies either are affiliated with international societies such as CISAC or BIEM etc., or have direct contacts with other national societies.

As other groups of authors, publishers, etc., meet together to consider their common problems it seems that their proposed solutions turned toward the formation of similar societies. Such an organization has been proposed for illustrators,[24] and for translators,[25] although in each case the problem of securing authorization is at least of equal urgency to the problem of collecting reproduction fees.

The many societies composed of authors of literary, non-dramatic works are usually interested in achieving financial betterment of the author by developing standard contracts, advising authors on business and legal matters in relation to copyright properties, etc. There is no evidence that they usually build up archives such as those of the collecting societies. They may keep files of contracts but their interest in keeping these appears to be to check on the terms of the contracts to see that authors are not signing contracts prejudicial to their interests. The British indeed do not have a collection society for dramatic works and the British League of Dramatists reported in The Author (Spring, 1950, p. 86) that a considerable number of British plays were produced yearly in Australia without permission "it is thought due to a lack of a central source of information as to the person to whom application for permission should be made. Therefore the British Drama League in Australia will be supplied...with as complete a list as possible of British copyright plays with names and

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addresses of the persons...from whom permission to produce should in each case be obtained" and requested each member to supply a complete list of his plays with the name and address of the source from which permission for the various performance rights should be obtained. The article gave no indication that the British Society would be able to supply such a list from its own records.

Business in regard to these properties (which are after all the bulk of printed matter) is apparently transacted directly with the copyright owner, the means of contact usually being the publisher.

2. Publishers.

It is assumed in Berne Union countries that the author holds the copyright in his work and so it is to him that permission to use, or to buy rights in non-dramatic, literary or pictorial works should logically be made first. However, unless an author is so prominent that his address can be easily ascertained from a directory it is probable that contact will be made through the publisher. Unless the publisher has gone out of business, the publisher's address should not be difficult to locate. In the majority of cases indeed the publisher will hold the license to publish in book form in the home country and perhaps abroad. And sometimes he may own the copyright outright, although authors' societies campaign constantly against this practice.[26] If the publisher does not own the copyright he will presumably be in touch with the author in order to remit the royalties due. This is therefore an apparently satisfactory means of contact, especially in the author's home country and if the inquiry is made within a few years of publication (apparently many contracts are written to run for limited periods of time, such as five years).[27]

G. Herbert Thring,[28] Secretary of the British Incorporated Society of Authors, Playwrights and Composers, warns compilers to be "exceedingly careful to ascertain whether the works he selects are still in Copyright and that he has the leave of the actual owner of the Copyright. He should not be content with the hurried statement of the publisher, who in many cases--though he may hold a limited licence to publish--does not own the Copyright." ..."It should bb added also that a publisher, although he lives by the marketing of Copyright property, is not the soundest authority on legal questions."

Contracts of transfer must be in writing in Australia, Bulgaria, Canada, France (for public performance

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and presentation), Great Britain, Ireland, Netherlands, Poland, Rumania. They must be registered in Spain; are not valid against third persons unless registered in Brazil, Canada, Japan, Lebanon, Portugal; serve as prima facie evidence if registered in Australia, New Zealand and the Union of South Africa.[29]

Dr. Paul Koretz in answering the letter of the Shotwell Committee (See p. below) said "An investigation [of ownership] is ... greatly facilitated in countries... where the law requires the written form for the assignments of copyrights. In fact in other countries where such law does not exist, the assignment of copyrights is also carried out in written form, according to general practice."

There is also a certain amount of publishing done on a commission basis--highly technical books and "vanity" publishing, for example, in which the contact between author and publisher may be of short duration. In this situation even publishers may have trouble.

Etienne Gillon, of Librairie Larousse, gave a report to the International Publishers Association in 1956[30] in which he treats of the problems raised by the growing use of illustrative material, which is often handled on a commission basis:

> "The right of reproduction is not only sanctioned by payment but also by a demand for authorization prior to publication. When the publisher knows the author nothing is more easy. But if he is dealing with several illustrators, situated in different places, the difficulties often become almost insurmountable in cases where the publisher is pressed for time (and what about the case of periodicals and journals!). A text usually has only one author, well-known to the publisher and usually under contract to him, but the illustrations can be the work of many artists or photographers, whose works the publisher has assembled without necessarily knowing the artists themselves. One cannot thus make a contract with them and it is necessary for the conditions of purchase to rely on custom, if there is one, or a schedule of rates, if it exists, or on the caprice of the illustrator... A palliative to this inconvenience lies in the existence of illustrators' agencies having the authority to give authorizations and to collect their royalties. But all illustrators do not belong to them and one is often ignorant of the

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existence of these organizations or the names of their members. The publisher is thus sometimes forced to reproduce a document before he has been able to obtain permission. In a suit, the court will certainly decide in favor of the illustrator. But there is something illogical about this that the judge, resting on juridical theory, does not perceive: the documents reproduced were 'on the market' in the sense that their authors have made them known to the public in order to sell them or have them reproduced. Isn't this fact a tacit permission? This deduction is so natural and so in accord with practice that Italy and France are in favor of suppression of prior authorization." [Translation supplied]

He also spoke of international difficulties: [Official summary]

Though it sounds paradoxical, translations of a book in another language have often failed [in accomplishment] because of illustrations. The difficulties of the editor to find out the proprietor of pictures abroad, to request their authorization for a reproduction and the transfer of his fees seem at times insurmountable. These difficulties could be avoided if the editor would take into consideration a translation when making an agreement with the illustrator. [The usual method of payment is by lump sum and the original publisher has no further contact with the artist unless the book is primarily a book of pictures supplied by one artist, in which case payment is on a royalty basis.]

Germany and Austria have proposed to put up an 'international center for illustrations' whereto the fees would be paid and where information could be obtained. [France has succeeded in creating the Association pour la Diffusion des Arts Graphiques et Plastiques of 600 publishers and illustrators.] But the answers to the questionnaire proved that this project does not seem realizable at this moment, because of the particulars of regulations in the various countries.

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He nevertheless proposed:

> Either an international center should be created which deals with and settles the payment of fees and gives information; or at least that a bureau de liaison should be established which would follow the evolution of this question.

3. Legal deposit and national bibliographies.

The institution of legal deposit was started in France in 1537 by Francis I[31] who wished to leave to posterity a record of the growth of arts and sciences during his reign. He required that a copy of any book, volume or pamphlet placed on sale be deposited at the library of his chateau at Blois. This library ultimately became the foundation of the Bibliothèque Nationale. Since this was obviously an excellent means of building up libraries other countries adopted the idea. Inevitably it was also found to be an efficient means of censoring publications. As the concept of copyright emerged the system of deposit was linked to it as a means of proving the existence and ownership of the property rights therein. A very recent use is to provide materials for international exchange among libraries. Today in the Berne Union countries legal deposit is acceptable only as a means of enriching libraries, and through the publication of bibliographies based on the deposit, as a record of the cultural life of the nation. There is still opposition voiced against it by the publishers who have to deposit the required number of copies (varying from one copy in some countries to the extreme of a possible 95 in Russia) and by those who seem to feel that it may again be linked to copyright or censorship.[32] Nevertheless it is in force in 60 countries of the world. In Switzerland the deposit is not by law but by voluntary deposit (depot gratuit) and it is extremely successful.[33]

In 1925 France adopted a new legal deposit law which required a deposit from either publisher or author, and from the printer, as a check on the number of copies printed in an edition.[34] Italy also passed a new law that year which also provided a check on the printers in that they must keep a list of all matter printed by them which is open to inspection by a local official. (Although Italian copyright law prescribes the deposit of materials at the Copyright Office in Rome by the claimant under a separate law copies of certain materials must be deposited in the national central libraries in Florence and Rome also by the printer.)[35]

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At the Cairo Conference of the International Literary and Artistic Association in 1929 Jean Vilbois[35] reported for a special committee, that while they were absolutely opposed to registration and deposit as a condition of copyright they were in favor of legal deposit. "This measure appears more and more indispensable to establish the date of publication, the size of the issue, the existence of reissues, to discourage fraud and to permit authors a necessary control. Also it assures the preservation of works of the mind and enriches the national libraries." It should be extended to printed works in all forms including films. "The international protection of the author can only gain by it." He stated that the Italian law was the one he would like to see generally adopted because failure to deposit is only penalized by a fine. The Congress passed a voeu to encourage its adoption in all countries.

At the next Congress in Budapest in 1930 the Belgian delegate (M. Coppieters) asked for a reconsideration as he felt the dangers inherent in the legal deposit had not been recognized.[36] ("In Belgium there is general opposition." Belgium, Luxemburg, and The Netherlands alone of European countries still do not have a deposit system.) He also pointed out the excessive number of copies which must be surrendered in some countries. He was answered by M. Coolus of France, who said it was necessary to look not only at the bad (but hypothetical) consequences. In France authors had wanted above all to have an efficient control over publishers. The measure was obtained with the help of the Société des Gens de Lettres and the Confédération des Travailleurs Intellectuels. "The danger of socialization is not formidable if it is limited to a few books. The real danger is not there. It is necessary that authors everywhere realize that." M. Ragot, president of the Société des Gens de Lettres, supported him. He stated that the opposition encountered in Belgium is precisely from those publishers against whom the law was directed. The essential thing is not the deposit but the printing declaration. It is the "état civil" which is of capital interest. The Belgian delegate then proposed that the Congress express itself as against the principle of depot legal for whatever purpose and that, in countries where it exists, the deposit copies be limited to three. The first proposal received only three votes. The second was voted unanimously.

M. Besnier[37] writing on La Question des Formalities in considering the possible solutions to a universal convention said:

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> Depot legal which exists in 60 states is in general simply declarative of rights; it serves to assemble public collections, to enrigh the libraries, to furnish a documentation. It is also a means of proof; it creates a veritable etat civil of the work, at least for printed works, photographs, etc.
>
> The copies deposited carry certain facts: year of publication, name of the author and publisher, indication of the [size of] the issue. Can we conceive of a certificate delivered for a small fee by the regime of depot legal accompanying the work abroad and constituting the required justification? Providing an official service, presenting an authentic and exact character, it would respond it seems to me to the desires and needs of the other state.

M. Neveux in his study on legal deposit in France[38] points out that the check on printings can easily be voided by collusion of the publisher and printer but in reality fraudulent printings are rare.[39] He also says (p. 97, 102) that the official register at the Ministry of the Interior is entrusted to people who have other duties to perform so that the register which should be kept up on a day-to-day basis is actually two weeks to a month behind.

> Thus the date of deposit which, in an infringement case could be a very important means of proof does not have the certainty that it should have...

He points out also that the deposit of works by the publisher at the Bibliotheque Nationale is very uneven between classes (p. 106). Thus prints, post-cards, photographs, etc., are deposited in small quantities. The staff of the Regie du Depot Legal at the library is also so small that it cannot adequately supervise the functioning of the law.

A member of the U.S. Copyright staff visited the Bibliotheque Nationale and other national libraries in Italy, Switzerland, and Great Britain in 1955 to inquire into the efficiency of legal deposit as a means of enriching the national libraries.[40] In France and Italy the

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librarians in charge of securing compliance with the law felt their work was much impeded by the provisions which relate to the printers. By means of prompt compliance activities (which in France were quite large) the libraries secured the works in books, periodicals, music, and maps they wanted. Deposit of prints in France was still very unsatisfactory, but in regard to other artistic materials such as photographs and postcards no attempt is made to secure deposits, preference being to have some society make a periodic deposit.

There is very little attempt to take legal steps for failure to deposit in any country. The penalty is a very small fine. Libraries prefer to buy the work rather than resort to legal action.[41]

M. Neveux notes briefly that the application of legal deposit to certain classes of works differs in the various countries and the general impression is that in practice deposit is limited to works which are useful to the libraries of the country. (p.129).[42]

Generally it is required that at least one copy of the deposit be kept permanently so that libraries must consider the problem of storing unwanted materials. Many countries exempt commercial, industrial, confidential, and ephemeral materials.

The problems of the British Museum in this regard are summarized in Partridge, p. 114:

> The fact that trade literature and advertisements came within the definition of a book in the 1911 Act resulted in an unexpected issue. A large patent-medicine firm sent copies of their medicine-bottle labels and tracts about tablets, etc., to the British Museum and boldly demanded receipts for them free of charge. There was also an intimation that about 10,000 such advertisements would be sent to the British Museum yearly for separate acknowledgment, entry, and preservation...

To relieve the Museum of th s unwanted influx (it was wartime and rigid economy was being practiced) the Copyright Act of 1915 was passed whereby the following materials were exempted and the British Museum given power to refuse deposit of: trade advertisements, catalogues,

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coupons, labels, wrappers, and such literature. The list was extended in 1932 to include: registers of voters, local railway and steamer time-tables, patent specifications, blank books, calendars, and wall sheets for elementary instruction. The library asked to be relieved of the deposit of games and puzzles also but this was not allowed.

Great Britain requires the deposit from publishers only and secures excellent results, in respect to the materials to which the deposit applies. The Copyright Receipt Office in the British Museum sends out a receipt for each work on the day it is received.[43] Since 1955 this receipt is a carbon of the Office record.[44] The Office will also record typewritten unpublished manuscripts.

Besides the determination of the date of publication for use in litigation, it is also necessary to know the date of publication to determine the duration of copyright for works of juridical persons, anonymous and (sometimes) pseudonymous works, and certain other special classes such as posthumous works, photographs, films, etc. If these works are subject to legal deposit presumably the date is available. Some countries also provide special registration for these works. (See tabulation above.) The recent British Copyright Committee in considering the term of protection to be given phonograph records and films had also the problem of providing some method by which the public could know from what date the protection should run. The Committee decided that records and films should not be subject to legal deposit, although this had been requested by interested libraries.[45] A different solution was proposed in each case.

In regard to records the Committee accepted the position of witnesses that it is extremely difficult to ascertain whether a gramophone record is in or out of copyright.[46] "We regard it as desirable that the record or the label on the record should bear the date, or at least the year, of issue to the public. In any event, insofar as records do not bear a date, manufacturers should be required, as a condition for securing any relief in the Courts, to state the year in which the record was issued to the public, if asked to do so." In substance this recommendation was included in the law.

In regard to films, which are now registered in England under the Cinematograph Film Acts of 1938 and 1948 (which require that all films to which they apply, whether British or foreign, should be registered before they are publicly shown and within 14 days of their being

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"trade-shown") it was proposed: "to use this date of registration for the reckoning of the term of copyright would not be in breach of the Brussels Convention and would moreover, provide a definite and easily ascertainable date, and we recommend its adoption for this purpose."[47] This was also adopted in the new law.

In England the Superintendent of the Copyright Receipt Office in 1955 reported that he received 1500-1600 inquiries annually about copyright and the deposit requirements.[48] In countries which have no copyright office or any central agency appointed to administer the copyright law the agency receiving the legal deposit may well be used as an information center on copyright matters.

National bibliographies are most generally based on the receipts of the legal deposit, and so are an easily consulted and widely distributed source of information about the works (in those classes which the deposit covers) published in a given country. These publications are often compiled in the national library but published with the financial support of publishers who look upon them as an effective means of advertising.[49] In fostering the free flow of information between nations they are invaluable. The amount of information given in the various lists and the frequency of publication very but they can be expected to include the title of the work, the name of the author, the publisher, and at least the year date of publication. UNESCO is actively encouraging the publication of these lists based on the legal deposit "for then its completeness is assured by juridically established controls."[50]

In summation, it seems that the legal deposit system is considered of value and is utilized in respect to copyright matters in Berne Union countries for the purposes of:

Establishing an <u>état civil</u> in a work; establishing proof of date of publication; furnishing a record of works published (in the fields covered by the deposit law) from which a national bibliography can be published which will make the information available to the general public; and to furnish a means of checking the size of the editions printed. The receipt office may also serve as a place to which the general public may apply for information on copyright matters.

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4. Libraries.

Libraries are naturally a source of information on copyright since the general public would go to them to consult the copyright laws, national bibliographies, publishers' trade lists, biographical dictionaries to ascertain death dates of authors, and other such information.

A. Hyatt King, writing on The Musical Information Services of the British Museum has this to say:

> "While bibliography does come fully within our competence, the legal aspects of copyright do not, particularly with the many special complications of musical copyright. For this reason we do not normally answer inquiries on technical points: if asked whether a certain composition is still in copyright, we simply supply the date of the composer's death, if known. But if, as so often happens with popular music, the composer is not in the standard dictionaries, we can only refer the inquirer to the publisher and the Performing Right Society, either of whom is likely to have more information than we. This type of inquiry arises quite often in connexion with music for films."[51]

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C. European comments on possible advantages in a registration system or difficulties encountered without one.

1. Answers to the Shotwell Committee questionnaire.

Opinion was unanimous that copyright on creation without compulsory formalities was successful and they would not consider a compulsory registration system. However, the experts consulted (with the exception of Dr. Hoffmann of the German government) thought a voluntary system might have advantages.

The Shotwell Committee attempted to find out in 1938[52] (1) how copyright without formalities works in the Berne Union countries; (2) what are its inconveniences, if any, to the user; (3) would there be any advantage in registering the work and in registering assignments and licences.

L. W. Joynson-Hicks, of England, thought that a register of works without assignments would be only a convenient starting-point, if combined with the registration of transactions of the title it would be very valuable in time. He felt this would be too expensive to ask the government to undertake, "though if it could be proved that we could have a form of voluntary registration similar to the Canadian one without undue expense, it would certainly be helpful."[53]

E. J. MacGillivray[54] said he would favor a system of voluntary registration such as is now in force in Canada and Australia. "Such a system affords a prima facie proof of title which is often of the greatest assistance to copyright owners when proceedings have to be taken against infringers. ... The Canadian system of registration has the advantage of not offending against the international obligations undertaken by Canada...and at the same time of providing a very valuable safeguard to purchasers of copyright material. ... The abolition of registration at Stationers Hall has imposed no great hardship upon the users of copyright material but it has deprived them of what was often the most reliable source of information in investigating title. ... As time passed from the date of the entry it became increasingly difficult to rebut the prima facie evidence of the register and it became more and more reliable as a fount of title. [underlining supplied] The registrations effected before 1st July 1912

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under the Copyright Acts of 1833 and 1842 are still available as evidence and prove very useful in establishing proof of title either for the security of a purchaser or as against an infringer. From the latter point of view the absence of registration as a means of prima facie proof of title is I think a grave defect in our copyright law as it now stands. If a plaintiff in a copyright action is put to the proof of his title to the copyright in a book or play first produced say 25 years ago he may have great difficulty in proving that it was first published within the British dominions or a Union country and in the case of pseudonymous or anonymous books he may have equal difficulty in proving authorship as his source of title. I have known cases in which these difficulties could not be surmounted and the owner of the copyright either failed in or was compelled to withdraw proceedings against an undoubted infringer."

Dr. Paul Koretz[55] expressed doubts as to the practical application of a new introduction of formalities and said it was insurmountably expensive for European countries. A survey of litigation showed there had been no difference in litigation without a registration system--mostly litigations of plagiarism were concerned and not questions of legitimacy. The advantage in registering would be that assignments and licenses could be ascertained without further investigations. "Such an investigation is, however, at present greatly facilitated in countries, as for example England where the law requires the written form for the assignments of copyrights. In fact in other countries where such law does not exist, the assignment of copyrights is also carried out in written form, according to general practice."

Dr. Emil Szalai[56] (Copyright Adviser to the Hungarian Government) began by saying he considered it "quite impossible to obtain reliable records...the number of copyright production is so colossal that reliable records do not come into the question at all." He considers registration immoral and useless (as a compulsory formality apparently) for he goes on to say "A record office of works of authors (writers, artists, photographers, etc.) would have some purpose. It would be quite useful if one could occasionally look up whether a work is still protected, who is the author, the publisher, to whom the rights have been assigned, etc. However, the keeping of such records is impossible; nobody could imagine the extent and scope of such a record office. The Institution

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of Copyright must help itself in some way or other and has to be satisfied with the fact that there is no record office. Withthe exception of the United States all other States manage without such records; [!] therefore, also the U.S.A. should finally be satisfied without one."

"It would be another question if the U.S.A. were to maintain their office but without compulsion, so that this office would be a place from which one could obtain information regarding copyright conditions. There would surely be thousands and tens of thousands who would register voluntarily, so that the office would become a sort of international voluntary branch of copyright."

2. The British Copyright Committee of 1951 gave some consideration to the question of registration:

> "We have given some considerable thought to the position of Her Majesty's Government as a member of the Berne Union. ... The Berne Union is recognized as providing a high standard of rights in intellectual property... The enjoyment of these rights is not subject to formalities, which in administrative practice can result in the erection of obstacles to the establishment and exercise of rights, whose existence is, in principle, not in question. The insistence on the enjoyment of rights without the need to comply with any formalities is not without its difficulties, although we accept that these difficulties are of minor significance compared with the importance of the principle itself. A formality such, for example, as the registration of a work, would in some instances provide valuable information as to the origin and continuance of a right. But the Berne Union proceeds on the assumption that the right subsists without formalities..."[57]

It has already been noted above that the date for the beginning of protection for films is to be based on the Cinematograph Films Register.

In regard to the question of onus of proof of title the Committee recommended some changes in the law to protect plaintiffs who are forced to prove their titles, in the absence of a registration system or other formality to afford prima facie evidence of title;[58]

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"There is no doubt that copyright has features which make it unusually difficult to prove title. As we have seen, the absence of registration or other formality is an essential feature of international copyright and with an incorporeal right of this nature there exist no such elements of actual possession or occupation which may afford prima facie evidence of title as exist in regard to other forms of property. Copyrights are often the subjects of assignments and licences passing through a number of hands, particularly in regard to important works which may remain of value throughout the long period of copyright protection or may acquire an enhanced value after a number of years of obscurity."

"The Act of 1911 dealt with this problem by a section in the following terms:

> '6 (3). In any action for infringement of copyright in any work, the work shall be presumed to be a work in which copyright subsists and the plaintiff shall be presumed to be the owner of the copyright, unless the defendant puts in issue the existence of the copyright, or, as the case may be, the title of the plaintiff, and where any such question is in issue then--
>
> (a) if a name purporting to be that of the author of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the author of the work:
>
> (b) if no name is so printed or indicated, or if the name so printed or indicated is not the author's true name or the name by which he is commonly known, and a name purporting to be that of the publisher or proprietor of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the owner of the copyright in the work for the purposes of proceedings in respect of the infringement of copyright therein.'

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"It has been found in practice that Defendants almost invariably put in issue the existence of copyright and the title of the Plaintiff and that the provisions of sub-section (3) (a) are of little practical value, since they do not overcome the difficulty of proving the derivation of title from the author or that the work is a work in which copyright subsists. This latter involves proof of the place of first publication of the work and in the case of an old work that the author is alive or died within 50 years of the date of the infringement. In the case of works of foreign origin, strict proof of these matters may involve a Plaintiff in substantial delay and expense. With regard to anonymous or pseudonymous works, it has been doubted whether the provisions of sub-section (3) (b) do more than establish prima facie evidence of title to any copyright which may, in fact, subsist in the work, while not affording even prima facie proof that any copyright does, in fact, so subsist. If this be so, the section does not protect the anonymity of the author in the case of an old work, because unless his identity is revealed it cannot be proved that the work is still in copyright."

"The proposals made to us were designed to shift the onus of proof in copyright actions, both in regard to title and subsistence of copyright, so that the onus should lie upon the Defendant to disprove these matters. This would mean placing an obligation on the Defendant which it would be impossible for him to discharge without access to contracts and other documents which passed between the parties probably many years earlier. We have come to the conclusion that any hardship which copyright owners may suffer under the present provisions is a further example of what they must reasonably accept in return for the very considerable benefits of securing copyright protection without formality or fee. On the other hand, we were impressed by the fact that Plaintiffs might be discouraged from embarking upon legitimate actions by reason of the delay and expense to which they might be put by being required to give strict proof of their title. We recommend that if the matter is not sufficiently covered by the present Rules as to costs, provision should be made to secure that a Defendant who puts a Plaintiff to unnecessary costs of proof of title should be required, in any event, to pay the cost so incurred."

"But in regard to anonymous and pseudonymous works, we are not satisfied that the present provisions of the Act comply with the requirements of Article 15 of the Convention, and we recommend it should be made clear

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that the publisher whose name appears on anonymous or psuedonymous works should be regarded as the owner of a subsisting copyright in the work, subject only to proof of first publication in circumstances which would afford copyright protection."

Also in regard to procedure the Committee recommended the following changes:[59]

275. "We have received a number of proposals for alterations of the law in matters relating to the details of procedure. ... Most of these matters have arisen as a result of experience gained in the operation of the provisions of the Act of 1911 and we make various recommendations of a detailed character about them."

276. "Licensee, Right to sue. Section 5 (2) of the Act of 1911 provides that the owner of the copyright in any work may grant any interest in the right by licence, but the section does not make clear, as it does in the case of a partial assignment of copyright, that the grantee of such a right is to have the same right as the owner of copyright to sue a person who has infringed the right granted. We are informed that doubts have been expressed by the Courts whether such a grantee could sue, at any rate without joining the copyright owner as a Defendant to the action. It has also been pointed out to us that, having regard to the duration and international nature of copyright, practical difficulties are found to exist because the copyright owner may not be readily available to be made a party to the action. We have come to the conclusion that it is desirable to make clear that an exclusive licensee is entitled to sue for an infringement of the right comprised in his licence though without prejudice to the right of the Defendant to set up any defence which he could have raised against the copyright owner. We recommend accordingly. In the normal case, however, the copyright owner should be a party to the proceedings, either as Plaintiff or Defendant. So far, our recommendations accord with those made in the Final Report of the Departmental Committee on Patents, which were implemented by the Patents Act, 1949. We realise, however, that the position in regard to patents is somewhat different from that which exists in respect of copyright, since

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the Register affords an address for service upon the owner of the patent, whereas, in the case of copyright cases may arise in which an exclusive licensee may not be aware of the address of the present owner of the right. We recommend therefore that power should be given to the Court to dispense with service upon the copyright owner, or even the necessity of naming him, where circumstances justify this course. As a consequence of this, we think it would have to be provided that the copyright owner should retain the right to sue for infringements in his own right, but protection would have to be given to meet the case of an infringer being involved in payment of the costs of two actions where one would have been reasonable or convenient. For the purposes of the present proposal we have used the expression "exclusive licensee" as meaning a person who has a licence exclusive of all others, including the copyright owner, to exercise the whole or any distinct part of the copyright in any defined territory and for a defined period. ...

279. "Very little evidence was available of any hardship being involved as a result of the necessity of proving that the seller or distributor of infringing material knew of its infringing nature. This may well be due to the fact that the remedy of obtaining damages for conversion is available to the copyright owner in most cases. This arises as follows. By Section 7 of the Copyright Act it is provided that all infringing copies of a copyright work are the property of the copyright owner, and that he may take proceedings for the recovery of the possession thereof or in respect of the conversion thereof. Any sale or distribution of copies would therefore be a conversion, and damages under this head could be obtained without proof of knowledge of the infringement. We propose hereafter to suggest some modification in relation to the remedy of conversion which will have the effect of making it more difficult to exercise this remedy in the case of an entirely innocent infringer. Nevertheless, we have come to the conclusion that it would be unreasonable to dispense with the requirement of guilty knowledge in the case of the

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of the secondary infringements which differ from the primary ones in that the Defendant may have no reasonable ground for supposing that there is any probability that he is doing anything wrong. In so far as this recommendation imposes any hardship upon copyright owners, we consider this is one which they cannot expect to escape under a system which enables them to obtain copyright protection without registration or other formality, and which thereby confers upon them substantial corresponding benefits."

3. The following article is interesting in that it asks for a simpler but more stringent registration system in a country which has a voluntary system and where registration is made with a performing rights society.

[The Article by Mr. Funari is not attached ~~hereto~~] to this copy

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The Film and the Cinematographic Public Register

by Antonio Funari

(In Il Diritto di Autore, April-June, 1956, pp. 207-208)

Italian films are subject to registration in two separate registers: the Pubblico Registro Generale, (General Public Register), in which all intellectual works are registered, and which is under the Presidency of the Council of Ministers, and the Pubblico Registro Cinematografico which is kept by SIAE (the Italian Society of Authors and Editors.)

The special Film Register was set up by decree in 1939 in connection with a governmental plan to provide financial assistance for the Italian film industry.

The two registers create a confusing duplication since they are not clearly divided in function, as in the case of the registers for chattels (ships, planes, automobiles); with one registry for identifying works and another for documentation regarding transactions arising from the works. The recordations in the Film Register determine priorities of payment, but confer no other rights, privileges or guarantees. There is no provision for withholding payment until it is established whether or not certain rights may be the property of parties not inscribed in the register.

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Since the production of films requires credit, the lack of guarantees of security or precedence creates a serious situation.

A new legal set up for the regulation of the motion picture industry is needed, with new standards of security and a more exact terminology.

A film is both an intellectual property and a chattel, but due to its particular nature, the regulations for such chattels as boats, automobiles, etc., would not be applicable. Obligatory and continuous recordation of the transaction involved is necessary.

The useless duplication of recordation in the General Public Register must be abandoned, and regulations appropriate for cinematic works as distinct from other intellectual works must be made so that all information about legal transactions pertaining to these works will be available to the public. SIAE should be the keeper of a register which would reflect all the facts chronologically.

At present, producers often delay recordation of a film so that other legal actions will not then be recorded before the producer can make the recordations

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in which he wishes to claim priority. Recordation must be obligatory, so that the register will not be merely a convenience for the recordation of claims when this happens to be to a person's interest.

The data should be complete. For instance, the law recognizes the rights in a film of 4 classes of authors (writers, composers, set designers and directors), and the exploitation ri ht of the producer, but only the producer's name need now be recorded in the Film Register. There should also be no distinction between a work to be produced and a work already produced, since certain rights in the various portions of the film exist during the period of production before the composite work is completed. Changes in the recordation brought about by changes in the work made during the production of a film could be made.

Registration of foreign films, both with and without dubbed-in dialogue in Italian should be required.

Compulsory recordation is to the public interest, as well as constituting a better guarantee of private rights. The assignment of government funds to encourage Italian film production will be on a fair basis only if continuous recordation throughout the existence of the film is obligatory.

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Among the types of transactions which would be clarified are mortgages, rights held in common by several people, utilization rights, the right of expropriation by the state and acquisitions mortis causa. Complete recordation would also give due notice to creditors.

SIAE should be responsible for the availability of the register to interested persons and for the release of copies of recordations, transcriptions, annotations and other documents as well as certificates.

The fixing of compensations to SIAE should be flexible.

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FOOTNOTES

1. Belgium passed the first national law dispensing with formalities in 1886. Several other countries had revised their laws by 1904 in order to join the Berne Union and these laws did not include the formality of registration. In 1904 the countries of Western Europe still having a registration system were: France, Great Britain, Holland, Hungary, Italy, Portugal, Russia, Spain and Switzerland. Cf. Copinger, Law of Copyright (4th ed. Easton, 1904).

2. Foreign Office, Correspondence Respecting the Revised Convention of Berne 1908, Cmd. No. 4467, at 156 (1909).

3. Id. at 71.

4. Id. at 26.

5. Id. at 90.

6. Law of Copyright Committee, Report, Cmd. No. 4976, at 12-13 (1909).

7. "For centuries most of the publications registered were works of comparative unimportance, the majority being plays, poems, sermons, and pamphlets. The more useful works were frequently not registered unless the copyrights were infringed. After the passing of the Act of 1842 almost as many trade labels and catalogues were registered as were books, so that registration had almost degenerated into a formality preliminary to an action at law for infringement of copyright, and the slogan 'Entered at Stationers' Hall' to be found in many books was in many cases a deliberate lie." In this connection it is interesting to note that the Copyright Commission Report of 1878 also concluded that the system of voluntary deposit at Stationers' Hall had not been effective. This Commission however felt that there were definite advantages in registration and proposed that the registry office be transferred to the British Museum, where official receipts for the deposits had to be given and certain registers kept under the Act of 1842. The registration should be necessary precedent to any suit and "in no case should [anyone] be able to proceed after registration for preceding acts of piracy." However, the British Museum Trustees opposed the idea because they regarded the

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registration of copyright as an executive function outside their sphere of activities. Other interests also opposed a more stringent system. - Cf. Partridge, Legal Deposit of Books, 92 (1938).

8. UNESCO Copyright Bull., No. 2/3, 1949, p. 94-100. See also for a fuller list of formalities.

9. India. Copyright Act, 1914 (§14). For a fuller account see Partridge, op. cit. supra, note 7, at 194.

10. Supra, note 8, at 104.

11. Henrion, Note pour l'Unesco, La Mise en Oeuvre des Droits d'Auteur (1950). Translation prepared in U.S. Copyright Office, p. 2.

12. Thring, The Marketing of Literary Property (1933). The role of the literary agent in England is discussed in Chapter 10 (p. 174). In regard to collection of royalties on the Continent Mr. Thring says difficulties have been experienced in some countries, though if the author has a responsible agent, or the Incorporated Society of Authors, Playwrights and Composers (normally not a collecting agency) "has a responsible collector, this defect may be overcome." p. 46. [Underlining supplied] See also Inter-Auteurs, Oct. 1930, p. 3, for comments on the English Society of Authors.

13. Aussy, Memento du Droit d'Auteur, 119 (1948). "Par deux arrêts de la Cour de Paris du 29 nov. 1907, il a été que l'apport que l'auteur adhérent fait à la Société de son droit de reproduction ne constitue pas un véritable apport social, dans de sens strict du mot, et que, par suite, l'auteur avait conservé le droit de disposer de son droit de reproduction."

14. Inter-Auteurs, 4e trimestre, 1956, p. 179.

15. Schulze, Urheberrecht in der Musik und die Deutsche Urheberrechtsgesellschaft, 194 (1956).

16. Id. at 221, 231, 233, 235 for examples of forms.

17. Cunningham, V. Memo in Copyright Office files on Discussions relating to Copyright, London, Sept. 24-28, 1956.

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18. Board of Trade, Report of the Copyright Committee, 1951, Cmd. No. 8662, at 48 (1952).

19. Société des Auteurs, Compositeurs, et Éditeurs de Musique. Bulletin No. 90 (1938), p. 249-255. The report for 1938 is the latest available in the Library of Congress.

20. Revue Internationale du Droit d'Auteur, Oct. 1956, p. 36.

21. Henrion, op. cit. supra note 11, at 10. SACEM was established in 1851. It has approximately 14,000 permanent and probational members. It employs 350 persons at its central office in Paris, exclusive of field personnel. Id. at 5-6.

22. Report of the Copyright Committee, 1951, op. cit. supra note 18, at 43-52, for discussion on the scope and practices of these societies.

23. Henrion, op. cit. supra note 11. Presents a concise account of authors' societies throughout the world on the national and international scene with particular attention to France and CISAC.

24. Gillon, Le Droit de Reproduction en Matière d'Illustration, in International Publishers Ass'n, Rapports de Quatorzième Congrès 61 (1956).

25. Saporta & Vilbois, La Protection du Droit de Traductdon in Ass'n Litteraire et Artistique Internationale, 5 sér., Bul. No. 2, 1948-50, p. 198-199. Proposes a licensing system for translations similar to that of B.I.E.M. The problem of translations has been avoided in this survey because it is an international problem complicated by the fact that some small countries do not protect foreign authors against translation into the national language. (See Unesco Copyright Bull, No. 2/3, 1949, p. 24). There is evidence, however, that difficulties are experienced in contacting the original author or publisher. (See, for example, Saporta, supra, at 193; and in Unesco Copyright Bull. No. 1, 1930, statements by Del Castillo at p. 15 and by Mendilaharzu at p. 38. The recommendation of the British Copyright Committee, 1951, (op. cit. supra note 18, at 114) that the Berne Union consider at its next conference the problem of making translations of scientific articles available with a minimum of restriction is also pertinent. "...The delays which occur in tracing the copyright owner and securing his consent to a translation

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no doubt account for the practice of making unauthorized translations...").

26. Thring, op. cit. supra note 12, at x, and publications of authors' societies and manuals for authors.

27. Id. at 45. "This limitation [as to time] must vary in separate cases... In ordinary cases five or seven [years] would be enough."

28. Id. at 121.

29. Supra note 8, at 100, 96.

30. Gillon, supra note 24, at 51.

31. International Institute of Intellectual Cooperation, Le Depot Legal (1938) gives a short history and the world-wide status of legal deposit. While the publication is old, it is still valuable. Great Britain, France, Switzerland, it is known, have not changed their laws since then. For the British Empire in detail see Partridge, op. cit. supra note 19.

32. Neveux, Le Dépôt Légal des Productions des Arts Graphiques, 124, 133-135 (1935).

33. Dunne, Memo on Legal Deposit Systems in Europe (1955) in Copyright Office files.
Unless otherwise noted material on the present functioning of legal deposit is taken from the memo, attached as an appendix.

34. The declaration forms to be filled out are included in the French publication of the law: Régie du Dépôt Légal, Le Dépôt Légal, Instructions Pratiques et Textes Légaux, 28-46 (1943).

35. Vilbois, Rapport sur les Conditions et la Durée de la Protection du Droit d'Auteur (Étude des Articles 2, 3, et 4 du Projet de Loi-Type in Ass'n Littéraire et Artistique Internatonale, 4e sér., Bul. No. 8, Dec. 1929, p. 96-97.

36. Ass'n Littéraire et Artistique Internationale, 4e sér., Bul. No. 9, 1930, p. 177.

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37. Ass'n Littéraire et Artistique Internationale, 5 sér., Bul. No. 2, 1948-1950, p. 180.

38. Neveux, op. cit. supra note 32, at 83.

39. 46 Le Droit d'Auteur 102-103 (1933).

40. Dunne, supra note 33.

41. Int'l Inst. of Intellectual Coop. op. cit. supra note 31, at 83-85, and Dunne, supra note 33 at 6.

42. Id. at 28-37 for a tabulation of works to be deposited in the various countries.

43. Partridge, op. cit. supra note 19, at 113 footnote 2: "The receipt given by the British Museum is documentary evidence of publication on a given date, sometimes a very useful thing to prove, especially when the question turns on priority of publication. No forms or fees are necessary.--L. C. Russell, Copyright Condensed and Explained, 1922, p. 31."

44. Cunningham, op. cit. supra note 17.

45. Supra note 22, at 28.

46. Id. at 34.

47. Id. at 38.

48. Dunne, op. cit. supra note 33, at 13.

49. Switzerland is a notable example of this--the section of the Swiss National Bibliography listing trade books is reprinted as the publishers' trade list. In Great Britain legal deposit is reported as being more prompt since the inception of the British National Bibliography in 1950. (Dunne) Bibliographie de la France is published by the Cercle de la Librairie and carries a section of announcements of forth coming trade books. (Neveux, op. cit. supra note 32, at 95) New Zealand reported the legal deposit became more effective after the Annual Copyright List began publication in 1933. (Int'l Inst. of Intellectual Cooperation, op. cit. supra note 31, at 26, 85. On p. 21 it is noted that although Belgium does not have legal deposit certain publishers send all their

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publications to the national library (about 90% of the national production.)

50. The information given in this paragraph is widely available but succinctly stated in Barker, Books for All, 72 (1956).

51. 13 Journal of Documentation 9 (1957).

52. 2 National Committee of the U.S. of America on International Intellectual Cooperation. Committee for the Study of Copyright. Conferences on Copyright Legislation 40 (d) (1939).

53. Id. at 40 (e).

54. Id. at 40 (f)-(i).
It is interesting to note in connection with Mr. MacGillivray's opinion given above that he appeared before the Copyright Committee in 1909 as a representative of the Society of Authors at which time he testified as follows:

> "The society are of opinion that compulsory registration should be abolished, and that the name of the author on a work should be prima facie proof of title.
>
> "As regards literary works the present system or registration is of no value as a warning to the public, because registration need not be effected until the day upon which a writ for infringement is issued. It may occasionally be of use as affording prima facie evidence of title, but the society think that for this purpose its use is more valuable for covering defects in title than for assisting a plaintiff who is in fact the proprietor of the copyright. And in any case it would seem that if before issue of writ both parties to the action have registered, the one registration practically cancels the other for the purpose of proof.
>
> "As regards artistic works, it may be contended that registration is an effective warning to the public inasmuch as no action can be brought in respect of anything done before registration. The value of registration for this purpose is probably much overrated. ... Registration is probably of more value to the dishonest than to the honest. It enables an

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unscrupulous person to search the register for technical defects, and when found to copy the work with impunity until the register is rectified. On the other hand the absence of registration, even if definitely ascertained, is no great security for the person, whether honest or dishonest, who desires to copy it. If he puts his copies on the market the proprietor of the copyright may without any warning to him make the necessary entry, buy a copy of the work, and issue his writ all on the same day. The proprietor will then be entitled to an injunction, delivery up of all unsold copies and costs of suit. Absence of registration is therefore no guarantee of security unless the infringer keeps a constant watch at Stationers' Hall.

"The society recommended the abolition of registration because it will enable the British and foreign author to be placed on the same footing as regards formalities and proof of title. This, if accomplished, would be a great advance towards uniformity and simplicity in copyright law."

55. Id. at 40 (k)-(m).

56. Id. at 40 (p).

57. Supra at 2.

58. Id. at 104-105.

59. Id. at 101-103.

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APPENDIX

1. Performing Right Society declaration forms (3).
2. Dunne, Report on Legal Deposit Systems in Europe.

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